THE

HISTORY

OF

GAVEL-KIND,

With the Etymology thereof;

Containing alſo

An Aſſertion that our *Engliſh* Laws are for the moſt part Thoſe that were uſed by the Antient *Brytains*, notwithſtanding the ſeveral Conqueſts of the *Romans*, *Saxons*, *Danes*, and *Normans*;

With ſome Obſervations and Remarks upon many eſpecial Occurrences of *Britiſh* and *Engliſh* Hiſtory.

By *Silas Taylor* Gent.

To which is added a ſhort Hiſtory of *William* the Conquerour, written in Latin by an Anonymus Author, in the time of *Henry* the Firſt.

Theogn. Gn.

Δόξα μὲν ἀνθρώποισι κακὸν μέγα πεῖρα δ' ἄριστον.

LONDON,

Printed for *John Starkey*, and are to be ſold at his Shop at the *Mitre* in *Fleet-ſtreet*, between the Middle-gate and *Temple-Barr*. 1663.

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51

TO HIS

MUCH HONOURED PATRON,

Sir *EDWARD HARLEY*,

Knight of the Honourable Order of the *BATH*, &c.

SIR,

I HAD no sooner Reflected upon this my Resolution of engaging your Name in the Front of this Treatise; but was Conscious that probably (and perhaps deservedly) I might hereby attract the imputation of Impudence, not being confident or assured, that any thing may therein be

found, which may afford either delight or ſatisfaction to You; or engage You to beſtow upon it ſome few ſpare minutes (if ſuch may at any time favour You from your greater or more ſerious Affairs). But finding my ſelf in Gratitude deeply bound and engaged to make this publick Teſtimony (though a ſlight one) of my thankfull acknowledgments for thoſe many and extraordinary favours, which I have received from You; the force of this Argument, made void the fear of the former. I have been much longer about this Task, than at firſt I did propoſe; yet I can aſſure you Sir, it met with above a years miſ-carriage, by reaſon of my laſt abſence from *England*. The firſt Eſſay at it was made in *Scotland*, being immediately before my going thither by ſome Friends earneſtly thereunto ſollicited, and unwillingly ingaged; where I found but ſmall leiſure from my Employments, to accompliſh their Deſires: yet did credit, that your Affectionate engagements of me afterwards in *Dunkirk*, whilſt you were Governour there, would have

have afforded ſome few hours to have rendred this Piece into a better ſhape and form; but it is not unknown to You, how and upon what grounds my Expectations were there alſo Fruſtrated; inſomuch that theſe undigeſted Obſervations are but thoſe I could (*Raptim*) by ſmall parcells catch from my ſeveral Obligements. They are I confeſs for the moſt part *Nocturnæ Lucubrationes*, Collected for a kind of Diverſion, when Laſſitude and Wearineſs proceeding from my daily Turmoyl of employment, invoked a Ceſſation and Repoſe; and in this ſenſe only they may be juſtly ſaid to ſmell of the Lamp: withall engaging me to reſtore again the Product of this time into your hands, from whom it was at firſt in ſome part Stoln. You have Goodneſs ſufficient to Excuſe what in them is amiſs; to Methodize them in your own Thoughts; and to Impute that want of Mercury which I am aſſured you will find in them, to the predominancy of my then Martial planet: it being well known I had more Arms and Proviſions of Warr under my Care, than

Books

Books or Papers in my Cuſtody, which laſt had been by much more convenient for ſuch a Work. Should this paſs with your Approbation and Allowance, and ſtand Protected under your Umbrage; Cenſure cannot injure him, who ſhall think himſelf greatly honoured in being reputed, Much honoured,

Your moſt Obliged and
Humble Servant
Silas Taylor.

THE PREFACE.

Courteous Reader,

TO your View and Examination here is presented, not a Law-case upon the Tenure of Gavelkynd, (for that would have proved beyond the abilities of one that confesses himself no Lawyer; and professes himself ignorant in that Practice and Study, as the Author doth) but only the History of it; by which the whole design is, Historically and Rationally to investigate and trace the foot-steps of it from Antiquity; and to inform you, that the exquisite Discourses of that excellent Person Dr. T. B. afforded freely to me then residing at Hereford, by his Epistolical correspondencies, gave the first ground and foundation of some enquiries into the Etymology of this most antient Tenure. Since which time by several Friends, who had got a sight of those broken Obser-

Obſervations I had made, and by others who accidentally had heard of them; I have received ſeveral Importunities to make them publick. But laſtly, a further occaſion being unexpectedly adminiſtred, (ſome while after I had collected thoſe firſt Notes of this Tenure) by that induſtrious Gentleman Mr. William Somner *of* Canterbury, *in his late Printed Treatiſe of* Gavelkynd; *I have intermingled thoſe firſt Obſervations, with theſe my Animadverſions on his Learned Diſcourſes. I enter not upon this undertaking to Quarrel with him, (whoſe Labours, as they are Pleaſant to ſuch, who are Delighted in the Knowledge and Obſervation of the Manners and Language of our Fore-fathers; ſo have they been, and ever will be very profitable to all that are ſtudious and inquiſitive into Antiquity: for his ſucceſs in the Reſtauration of that our antient Speech, which had been almoſt loſt, and in a manner ſo long buried in Oblivion, is very eminently known and admired, and ſhall by me be always gratefully acknowledged) or with a deſign to Carp at any thing that he hath Labouriouſly written: it being of all things the moſt odious, and as much unprofitable, for any to make that the end of Writing: (A crime whereof our world of* Brytain *of later days hath been too too guilty) Farr be ſuch a ſnarling Genius from me! But I was wholly moved upon thoſe grounds, and ſteered to thoſe ends, which I have declared in the Proœmium of the firſt Chapter; to which (for avoiding needleſs repetitions) I freely referr my ſelf, and deſire your charitable judgment and ingenious cenſure. The whole Diſcourſe relates to a Theſis; by ſome, not thought abſolutely material, nor to be of general concernment in relation to the preſent uſage of it; yet it hath a little more than a leſs attentive Reader may imagine.*

There

There will be found in it (I confeſs) ſome Reflections upon Hiſtory; which though carrying a ſenſe different from moſt Hiſtorians, are not (in my opinion) devoyd of all probability; they being (I aſſure you) my real Cogitations, and ſuch Collections that without force eaſily ariſe from the reſult of my Reſon, and here are ſubmitted to your examination. The mark I aim at, is to reduce things to their True and Genuine Originals; to which even nature inclines us by a natural propenſity. If the work ſeem perplext becauſe miſcellanious, or not pleaſing to a ſevere rigid Critick becauſe ſo intermixt; let the Turffs of Augarus (*King of* Edeſſa) *build my Apology: who being at* Rome, (*the ſame I ſuppoſe whom* Euſebius *calls* Agbarus) *and for his Converſa ion much beloved of* Auguſtus Cæſar; *after ſome long time of ſtay there, had an earneſt deſire of returning back to his Country; which* Auguſtus *being unwilling to grant;* Augarus *for diverſion uſed much to Hunt, and in that Recreation compaſſing the Countries, took many wild Beaſts alive: and from every Country where he caught them, carried of the ſame Earth together with the Beaſts back with him to* Rome. Auguſtus (*as his manner was*) *ſitting in the Circus, to him came* Augarus, *ſhewed him the Beaſts and the Earth, and which Country Earth belonged to every Beaſt. The Earth he cauſed to be laid in ſeveral parts of the Circus, and all the Beaſts to be let go from one place; whereupon every Beaſt, leaving one another, ran to the Country Earth from whence he was taken. The Emperour beheld it long and earneſtly, wondring to ſee nature untaught, make even to Beaſts their native Earth deſirable: of which* Augarus *made uſe as an Argument for his deſire to return to his native Country.*

Procop. Hiſt. Perſ. Bell. lib. 2. cap. 9.

try. Auguſtus *overcome with the Argument, though unwillingly, yet granted his deſire. This is that* (*I ſay*) *to which by Nature we have an inclination, and enforces a certain natural propenſity, which tends us toward our firſt Original beeing: ſhall thoſe Means then be ſlighted, which bring things diſtinctly ſeparated to this firſt Source and Fountain? There is a kind of ſecret impulſe, which with pleaſure and delight carries us to this ſearch; but what it is, we know no more than what is Sympathy. By this I was carried out to this Work, and hope* (Courteous Reader) *it will gain your favourable acceptation; at leaſt* (*by way of excuſe*) *to favour it with an abatement of your expectation of the exquiſite ingredients of Language and Method; for* (*ſeriouſly*) *my rude Minerva cannot atchieve them. All that I pretend unto, is to retire my ſelf unto my Homely-antient-native Earth; than which, no other Turff at preſent better pleaſeth me.*

If any particular by reaſon of the irregularity of this Diſcourſe, may ſeem to be paſſed over, it is not the proceed of fear to enter upon the merit of the cauſe; or, in the leaſt out of any deſign to prævaricate; and perhaps in thoſe caſes, (*if any ſuch there be*) *my thoughts are, and I am perſwaded you will find, that ſuch particulars under ſome one or the like Head have been already anſwered. My labour and intentive aim and ſcope hath been, as much as I could, to avoid Tautologies; which was a difficult task to be performed in ſuch contests, where the Maxim received proves miſtaken, or erroneous: which frequently ingages a ſimular reſiliency upon all Deductions thence enforced. I have made choice of ſuch*

particulars,

particulars, whereon (I gueſs) Mr. S. lays the foundation of his Structure, to be the Texts and Heads of my ſeveral Chapters; wherein is firſt ſhewn the Probability, that in all firſt Plantations, there was the practice of Partition: next, that the Brytains *(the Aborigenes and firſt Planters of our Iſle) had the knowledge and uſage of it: And that the ſeveral Invaders and Conquerours of our Iſland did not alter the antient Laws and Cuſtoms thereof. That the knowledge and uſe of the word* Gavel, *is ſtill among the* Cambro-Brytains, *(the ſcope of the whole work being to prove it of a* Britiſh *Original) and that all their Laws did centre antiently upon Partition. It diſcourſes, when and for what reaſons Primogeniture ſwallowed up Partition, and had the Preference; with ſeveral accidentals relating to the underſtanding of antient Hiſtory; which intermixture all the Sections and Chapters have; but in this, I ſhall referr you to them, or to the Table. The Latin Tract Printed at the end of this Book, (as I think, and I believe when you have read it you will be of the ſame Opinion) was wrote in the time of* Henry *the Firſt, ſurnamed (by our Writers)* Beauclerk, *the Son of* William *the Conquerour, made above five hundred and threeſcore years ſince. In which are ſeveral matters to be found, that are worthy remark: among the reſt a Catalogue (which I never met with in any Hiſtory (before this) extant) of thoſe that contributed Ships in the Great* Norman *expedition. I cannot gueſs at the Author's name; yet by what he concernedly inſiſts upon in one place, I judge him to be a* Monk *of* Battel Abbey, *founded by* William *the Firſt, near that place where he had the Victory over* Harald: *This is but Gueſs.*

The Preface.

However that this Treatiſe may not be (as it were) Buried, and to the Lovers of this Study, by reaſon of its ſmallneſs, not eaſily found: I have adventured to ſet it out, to accompany this my Diſcourſe; for the uſe of thoſe that are Lovers of Antiquity. I will not be too tedious in Prefacing, nor oblige any to think, that a plauſible Prologue will better a bad Play; make tryal, and if then (Candid Reader) *this finds your Courteous acceptance, it will ingage the not-confident Author in his other Studies to be*

Yours,

S. T.

A Table of the Chiefeſt Paſſages and Denominations in the following Tract.

A. Fol.

A Cangre in Hanteſcira 66
Adder about the neck of a new born Child 22
Adultery, the Forfeiture and Puniſhment of it 71, 72
Æthelbert King tranſlated the *Welſh* Laws 53
Æthelſtan King his Laws concerning the *Welſh* 52
Ætius the Conſul, who, 36
Alban St. his Troubles and Death 32
Albania 86
Alured King his Laws of *Mulcts*, what, 54
Allegiance and Fealty by Oath its antiquity 55, 61
Alcabala or *Alcavala* in *Spain*, what, 114
Alphredus Magnus Tranſlated the Laws of *Molmutius Dunwallo* out of *Britiſh* into *Saxon* 54

Fol.

Alvi filius *Turber* de *Rochborn* 66, 68
Ambroſius Teliſinus the antient *Britiſh Bard* 84, 85
Antiquity of the *Welſh* Laws 154, 155
Antient Cuſtoms 70
Arms deſcend to Brethren by *Gavel* 139
Armorica expounded 146

B.

B Ards 19, 20
Bards Genealogiſts for the *Brytains* 20
The honour due to them 23
Baſe Brytain in *France* and *Cornwall* mutual underſtand each other 146
Baſtards inherited with the Legitimate of *Wales* 28
The like in *Ireland* 153
Beer-Gavel 119

Bigott,

The Table.

Fol.

Bigatz, what in signification 178
Boer, what, 175
Boadicea, Queen of the *Iceni*, her ſpeech 32, 33
Bordarii, what, 169, 172
Borough-Engliſh Tenure 102
Brehon Law in *Ireland* 99, 253
Brecknoc 94
Briſtelmeſtune 116, 171
Britains
Antiently free 16, 35
Not exiled out of *Kent* 38
Co-inhabit with the *Saxons* 37
Their cuſtoms concerning Saints 91
Expell the *Picts* from *Scotland* 164, 165
Settle themſelves in the Lowlands of *Scotland* ibid.
Deſcended of the *Trojans* 83, 84
Britiſh Language 12
Britiſh propriety 16
Britiſh Valour feared by the *Romans* ibid.
Britiſh Baskets 31
Britiſh race extended 48
Britiſh Gavel and *German* Landſcheuten the ſame 137
Britiſh Laws made by *Molmutius Dunvallo* 154
Collected and Reformed by *Howel-dha* ibid.

Fol.

Brute 84, 85
Brutes partition 15, 16, 85
Brytania from *Bryton* 87
Buildings of the *Saxons* 79, 80
Buildings of the *Normans* ibid.
Burgage, what, 171

C.

Caer, what, 134
Caſtrum or *Cheſter*, what, ibid.
Cæſars Warr againſt the *Britains* 14
Repulſed by the *Britains* ibid.
He Conquered not *Britain* ibid.
Calumniare in Law, what, 65
Camolodunum 34
Cambria, *Camber*, Cymri Cymraeg 86
Cantref, what, 96
Canutus his Laws of Partition, 141, 142, 143
Caractacus Prince of the *Silures* 34
He aſſerts the *Britiſh* Liberty ibid.
His Proteſtation before Battel ibid.
Caſtles on Borders of *Scotland*, &c. 79
Cattel of more Valew than Land 28

A Table.

Fol.

Cattel diſchaged Fines & Amerciaments 29
Cerdiford in *Hampſhire* out of *Domeſdey* 65
Cennedl, what, 132
Characters of *Saxon* 76
Charters of *Saxon* ſigned by the *Norman* Kings 76
Changes from *Villenage* to *Gavelkind* 157, 158
Chief Juſtice 69
Chiefs in *Urchenfield* 110
Chedder in *Somerſetſhire* 117
Children no Kindred to the Parents 131
Churle, what, 168
Cities their Original 7
Claudius his Temple 34
Claim and Recovery of Lands againſt *Normans* 65
Clergy-men Gentlemen, by the *Welſh* Laws 173
Clown or *Colonus*, what, 168, 177
Cohabitancia, what, 7
Conan Tindaethwy, 26
Conqueſt and Conqueror, what, 56
Coverfeu 74
Conſtantine the Great 87
Common Laws 69, 145
Counties not antiently in *Wales* 94
Competition betwixt *Kent* and *Urchenfield* 106
Corniſh underſtand baſe *Britiſh* and *Welſh* 146
Cottagers and Cottages, what, 169
Cuntune in *Hampſhire* 66
Cuſtoms that are antient 70, 150
Cuſtoms of the *Welſh* 71, 132
Cwmmwd, what, 96
Cuſtom and Common right 152

D.

D. *Davies* his *Welſh* Dictionary 98
Danelage, what, 54, 57, 58
Daniſh impreſſion on our Laws 54, 55
Daniel Samuel examined 57
Deeds for *Gavelkind* 124, 125, 126
Deeds explained, produced by Mr. *S.* ibid.
Diſcourſes Polemical much irregular 3
Diviſions, inteſtine facilitate Conqueſts 16
Diviſion of *Wales* 96
Domboc, what, 53, 54
Domeſman, what, 110, 111
Donald the 5th. loſt *Scotland* to the *Saxons*, &c. 163, 164
Dribinge, what, 70
Druids 16
The *Britiſh* Judges 17
Their Learning ibid.

Their

fol.

Their judicial employments ibid.
Their determinations of righ ibid.
Caus'd execution of penal Laws ibid
Britain their Gymnasium 17
They cease 19
Dubritius, Prince and Bishop 90
Dûn what it signifies 116
Dun a paix in *Scotland* 165, 166
Dutch Landscheuten, what, 136, 137

E.

Edgar King his Laws, what 54, 55
Confirmed by the Conqueror 58
Edgar Etheling 60
Edlin expounded 49
Edward King his Laws 55
Confirmed by the Conqueror 58, 59
Edward King his Laws concerning the *Welsh* 51, 52
Edwin and *Morchar* Earls 60
Edric Silvaticus or Salvage 78
Eldest Son among the *Britains* 49
English recover Lands against the *Normans* 65, 66

fol.

English Normaniz'd 76
England 87
English setled in *Scotland* 162
Exgin or *Urchinfield* their Kings 44, 45
Errors once received and taken for granted 2
Erdisley in *Herefordshire* 79
Escuage, antiently 171
Ethelbert King his Translation of the *Welsh* Laws 53
Ethelred King his Laws of Tryal 64
Eubages British Philosophers 20
Exchequer, when erected 74

F.

Fashions, *Saxon* and *Norman* 74, 75
Fealty or Allegiance very antient 55
Fee, *feudum* or *feodum*, what 170, 171.
Fee-tayl its original 170
Feminine conduct amongst the *Britains* 33
Feofamentum vetus & novum 140
Fighting forms chang'd by the *English* 77
For-gavel 118
Fortifications of *Romans*, *Saxons*, and *Normans* 77, 78, 79

Fol.

Forfeiture of Lands upon what Grounds to King *William* 67, 68
Fortalices 79
Fortified houſes antient ib.
Foſter-children in *Wales* divided with *Foſter*-brethren 28
Free-men or *liberi homines*, what, 108
French do uſe partition 11
French tenure of partition 12
French, how uſed in our Laws 69

G.

Gables, *Gablum*, *Gabulum* what, 113, 114, 115
Gabelle among the *French* 114
Gablum ſignifies rent 116.117. 158,159
Gablatores 117
Gabella 122
Galfridus Monumethenſis defended againſt *Polydore virgil* 83
Gallick cuſtomes 11
Gallick colonyes 12
Gavel as M^r. *S.* expounds it, what, 112
Gavel-Gyldam 119
Gavel-man 120
Gavelate, a Writ 121, 122, 123

Fol.

Gavel in denominations 89,90
In the *Britiſh* Dictionary 92
What it ſignifies 92, 93
Not impoſed by the *Normans* 95
Uſed in *VVelſh* ſubdiviſions of Lands 96
Several ſorts of Gavels 102, 103
VVelſh Laws for Gavel-kynd 103,104,105,106
Gavel-kynd a mark of the Antient *Britons* 152,153
The hinge of the *Britiſh* Laws 155,156
Gavelkind in *Scotland* 159
Gavelkind,
Throughout the Kingdome of *England* 4
In all firſt Plantations 5
Antiquity of it 18. 137
Among the Princes of *VVales* 24
The ſignification of it 26
The evill and miſchief of it 27. 81.
The beſt uſe of it 27
That it is *extra Cantium* 89. 151
Gavelkind in the Term owes it ſelf to partition 149
Gavelkind in the Statute of *VVales* 98
Practiſed in *Urchenfield* 100
Held rent free 123,124

Fol.

Gavel-kind Lands in the King 128
Granted to Hospitals, how, 124. 128, 129
Granted to Religious Societies 129
Not to be forfeited for Felony 106, 107
Garrison of *Normans* in *Hereford*, before *William* the first 78
Gentlemen by the *British* Laws 172, 173
German Customes antiently 7
German partition in Principalities 9. 137
German partition in private Estates 9
German partition evicted by a jest 9, 10
German Landstheutan, what, 136, 137
Give-all-kynne 130, 131
Gildas Camberius translated *Molmutius* Laws into Latine 154
Glamorganshire Conquered 94
Gothick work used by the *Saxons* 80
Guorongus Vice-Roy of *Kent* 41
Gueily-gord, what, 105
Gymnasium of the *Druids* was in *Britain* 17

H.

Hacana and *Westazheconi*, what, 44, 45
Hecana VVulfhardus Episcopus 44
Hengist and *Horsus* 37
Hengists reception of *Kent* examined 37, &c.
How *Hengist* had *Kent* 45
He altered not the *Kentish* Laws 49
Heutland 90
Henry the first commands the observation of King *Edwards* Laws 161
His Laws of partition 144
Hereditary succession amongst the *Britains* 18
Heriot 108
Herring-gable 116
Highlanders in *Scotland* antiently *Britains* 160
Hony-gavel 118
Howel dha 25
He made not the *VVelsh* Laws 153, 154
When those Laws ascribed to him were compiled 97

Fol.

Hugo de port, against *Picot* 66, 67

I.

Iarsey Isle 11. 95
No venemous Creatures therein ibid
Ina King his Laws concerning the *VVelsh* 50, 51. 64
Joseph of *Arimathea* 32
Irish Rhein-taloon, or partition 99
Irish and *VVelsh* one Language originally 145
Irish and *British* Laws agree 153
Irish understand the *Manc* and Highland Languages 146
Ireland and *Thule* called *Britain* 145
Italian partition 12, 13
Juryes 61, 62, 63
Juryes among the *VVelsh* 64
Jus Angliæ both in Socage and Knights-fee 139

K.

KEntish-British Laws not altered by *Hengist* 46
Kent invested in *Hengist* Examined 37
Kent changes her *Gavelkind* 81
Kenneth King of *Scots* expels the *Picts* 163
Kent had four Kings at one time 45
Kingsland 44
King Ethelmund ibid
King Pibanus of *Ergin* 44, 91
Kings, *Gorvodius*, *Milfrith*, &c. 45
Kings-Bench 69
Kindred, what it is 130, 131
Knave, whence and what 176
Gods-cnave ibid
Knight-service in *VVales* 103. 107
Knights-fees descended to the Eldest 138
Kynd 27. 130, 131. 133

L.

Land-scheutan *German* Tenure 135, 136, 137.
Land-shifting, **Landskiftan** 136
The *Saxon* denomination of partition 143
The proper *Kentish* appellation 144, 145
Land antiently not valuable 6. 28

Fol.

Languages
Of Scotland 76
Saxon, English, and *French* 75,76
English not changed by the *Norman* Conquest 75
Welsh the remains of the *Gallick* and *British* 17
Laws of King *Edward* confirmed by the *Normans* 58,59
Lawes-common not written 69
Law-cases ibid.
Laws of *England* overthrew *Norman* intruders 65
Learning of the *Druids* 17
Legales homines, or Yeomen, marg. 63
Lieutenants of the *Saxon* shores in *Britain* 39
Lempster from a Church of *Nunns* 44
Lewes in *Sussex* 71
Lesley Bishop of *Ross* in *Scotland* an Historian 163
Lewis Island in *Scotland* hold *Gavelkind* 160
Liberty of *English-men* 81
Liberi Sokemanni, what, 148
Llan, what, 90
Llanfra vt ur a College antiently founded 90
Llangattock Gafael Meibon ibid
Litchfield Chronicle 58

Fol.

Loeger, Loegria 86
London 87
London a Memorial of *Troy* 83
London, its Laws very antient 55
Lower Germany uses Partition 11

M.

Malles 120. 133
Mannours or Circuits in *Wales* antiently 96
Marquises, Lords *Marchers* 42
Mayor, whence derived 49
Menavians understand *VVelsh* and *Irish* 146
Merewoldus a King 43
Merimnus a King 44
Mercelin a King ibid.
Merchenlage, what, 54. 57
Mete-gavel 118
Mickel-gemote 65
Military fees 149
Morgan 132, 133
Monmouthshire Conquered 93
Mortimer Radulf 78
Mulcts different in rate in *England* 59
Mulmusius Dunwallo British Legislator 154
His Laws Translated into *Saxon* 54. 154

Neifes

A Table.

Fol.

N.

Neifes what antiently 169
Normans
Of their Conqueſt 56, 57
Of their Alterations ibid.
They altered not the *Engliſh* Laws 57
Of their Laws in *Normandy* or *Neuſtria* ibid.
Employed in *England* before *William* the firſt 78
Their entring into *Wales* 93
Their original from *Norway* 58

O.

Oath of Allegiance 55. 61
Oate or *Oale-Gavel* 113
Odin, what, 174
Ollavintone in *Berkſhire* 73
Offa's Ditch a limit 43
Opinions received, hardly removed 1
Oſtorius Publius 34

P.

Paganus, *Pagan*, what, 168. 175, 176
Palatinates Cheſhire and *Glamorganſhire* 94
Pandeborn in *Berkſhire* 68
Parliament 65
Parceners per le Cuſtome 147, 148
Partition
Uſed in firſt Plantations 6
Uſed by the *Iſraelites* 8
Antiquity of it by ſacred and profane Authority 9, 10
Made uſe of by *Brute* to his Sons 15, 16
The Cuſtom of *Wales* 28. 103. 156
Among Males and Females 100, 101
Uſed by the *Saxons* 141, 142, 143
Uſed by the Engliſh *Normans* 144
Not in the Term *Gavelkind* 147, 148
Whether *ratione rei, aut ratione Terræ* 149
Continued in *Wales* by Statute 153
The manner of it among the *Welſh* 156
Pencenedl's or chiefs among the
Britains 23. 97. 132
Jews 23
Scots 24
Iriſh 97

Pelagian

Fol.

Pelagian Hereſie ſet againſt 90
Penda 43
Pibanus King of *Urchenfield* 44. 91
Piben, what, 174
Picts,
They injure and repulſe the *Britains* 36
The *Picts* wall ibid.
Planters at firſt, the condition of them 5
Placita, what, and Pleadings antiently 68, 69
Pleadings in *French* 69
Plumtune 116
Powiſland, Divided, Sub-divided, and Parcell'd 25, 26
Polydore Virgil examined 83
Privileges of *Urchenfield* 108. 156
Primogeniture preferred 82. 138
Price Sir *John* his defenſ. Hiſt. *Brit.* 84
Pride-gavel, what, 112, 113
Primogeniture in *Scotland*, why, 166

R.

Read-gavel 119
Reguli or petty Kings 15, 45
Regulus and *Rex* 42

Fol.

Referrees of *Howel-dha* what they did 155
Relief 108
Rents reſerved 7
Rent how to be underſtood 115, 116
Rents ſeveral ſorts 117
Rented Land, what antiently called 119
Rhandir, what, 96
Rodeley in *Glouceſterſhire* 112
Roderic the Great 24
Rogerus Deus ſalvet Dominas 177
Rochborn in *Hampſhire* 66
Roturier of *France* 11, 95
Rowena Hengiſt's Daughter 39, 41
Roman Empire parted 87, 88
Romans
Altered not the *Britiſh* Laws or Cuſtoms 29
Greedy of Conqueſts 30
Their proceedings in the Conqueſts of *Judea* 30
Of *Greece* ibid.
Of *Britain* 30, 31
They uſed words of the *Britiſh* Language 31
Set up a falſe Will for the Emperour 32
The effects of it 32, 33
They deſert *Britain* 35

Fol.

S.

Saiſſon and Saiſnaeg, how to be underſtood 86
Saxons,
They Co-inhabit with the *Britains* 37
They defended the *Picts* wall 38
Whether they extirpated the *Britains* or no ibid.
They break their Article with the *Britains* 38
Their Piracies 41
They fail in their truſt 42
They expell'd not the *Britains* 47
They borrowed many *Britiſh* words 48, 49
They uſed *Britiſh* Laws and Cuſtoms 49
They intermix their *Saxon* with *Britiſh* 50
Their Laws provide for the *Britiſh* Inhabitants 50, 51, 52
They uſed Partition of Lands 141
Their Nobility, who, and what, 70
Concerning their Characters 76
They wrote Latin antiently in *Roman* Letters 76

Fol.

They change their forms of Fighting 77
Sand-gavel, what, 113
Sealing and ſigning of *Charters* 72, 73
Serjeanty Grand and Petit 171
Servi, what antiently 169. 172
Servitude not in *England* 81
Scotiſh Language 76
Scot and *Lot*, what, 78
Scotland 87
Scotiſh-Socage-Land 159, 160
Scotiſh with their Language had the *Saxon* Cuſtoms 161
Scotiſh tongue before *William* the Conquerour ibid.
Scots receive the *Engliſh temp. Willielmi primi* 162
Scotiſh Tongue when firſt received 162, 163
Scotiſh bounds in *Scotland* 165
Sherborn againſt *Warren* 65
Shires not antiently in *Wales* 94
Soc and *Sac*, what, 177, 178, 179
Socage Land changed 139
Socage Land antiently partible 89, 139
Sperſold in *Berkſhire* 73
Surnames, when firſt uſed 176, 177

Sute

Fol.

Sute and Doom in *Urchenfield* 111
Swyddog a Magiſtrate in *Welſh* 93, 173
Swine-gavel, what, 115, 116, 118

T.

Talaeth, its ſignification 25
Tania in *Brytania* 85
Teliteſin, *Ambroſius Teleſinus* 84, 85
Tenure of *VVales* 26
Tenures Jocular 72, 169
Tenures Military, &c. intruders on *Gavel-kind* 137
Tenenda's ad Gavilikendam, what, 124, 125
Tederlec in *Hampſhire* 68
Terra ex Scripto 144, 145
Thanes, *Theynes*, what, 173, 174
Thanes a Military honour 140
Theodoſius the Emperour 87
Title of the Conquerours Laws 59
Troy, *Troinovant*, *Trinobantes* 83
Trojan Britains 82, 85
Trojans the *Britains* Anceſtors 83, 84
Trojan Laws in *London* 55

Fol.

Tribute or *Tributum*, what, 115
Tydyn, what, 156
Tylwyths
Their ſignification, manner and uſe 21
How they were Recorded 22
Their uſe as to *Gavelkind* 23

V.

Verolamium 34
Villages and *Villenage* the Original of them 7
Villenage chang'd into *Gavel-kind* 157, 158
Villenage loſt in *England* 81
Villati or *Villani* 97
Villains, what, 168, 172
Antiently among the *VVelſh* 107, 108. 174, 175
Before the *Norman* Conqueſt 168. 171. 173, 174
In *Kent* 167
No name of reproach 168
Vortiger King
Engages the *Saxons* 36
Wageth them againſt the *Picts* 40
His wiſdome in waging them ibid.
What he gave to *Hengiſt* 45

His

Fol.

His Deposition and Restoration 40
Urchinfield.
Kings of it 44, 45
Customs of it 71, 107, 108, 109, 110
A Region 109
A Liberty 110
A Hundred ibid.
Their manner of judgement 110, 111
Their manner of Partition 156
Their privileges 108, 156
Usages of several sorts 102, 103
Vallum Severi, what and where 165

W.

Wales 86
Wallingford 115, 116, 71
Wardship among the *Welsh* antiently 104
Warham in *Dorsetshire* 101
Welsh, what, 86
Welsh Customs 71, 109
Welsh Juries 64
Welsh derived from the *Greeks* 85
Welsh-men understand the *Cornish* and *Manc* 146
pepe, what, 71, 72
Westsaxonlage, what, 54, 57
William the Conquerour Confirms the *Saxon* Laws 58, 59
Takes notice of the old *British* Laws 60
Affraid of the *English* after his Conquest ibid.
Swears to King *Edwards* Laws 61
Commands the Observation of King *Edwards* Laws ibid.
Engages the *Normans* against the *Welsh* 94
Windsore 116
Wittangemote 65
Wulfhardus Episcopus Hecanæ 44
Wulpher King 43

Y.

Yeomen, what, 63. Marg.
Younger Brethren by *Gavel* gives Arms 140

THE

THE HISTORY OF GAVELKIND.

TO reſtrain the propenſity and violent current of things Natural, is no trivial or ſlight attempt: ſuch another undertaking it is to go about to remove miſtakes, when two or three Ages have received them without any dubitation: impreſſions of the like nature will not eaſily be removed; extirpation always carries a violence along with it; and where there hath been a long irradication, there ſo much the more of force will be requiſite. This Fancy in people is not a Novelty, *Thucydides* complained of it in his time, ſaying, *Men receive the report of things, though of their own Country, if done before their own time, all alike, from one as from another, without examination.* Mr. *Somner*, in his *Treatiſe* of *Gavelkind*, hath *Lib.* 1.

laboriouſly evicted the common *Etymologiſtical* notion thereof, and alſo Learnedly declared the nature of it: yet becauſe I find a deviation in him, who hath diſcovered that we were in the wrong way; I think it not only Charity, but Duty, to examine and queſtion that path he hath ſhewed unto us, leſt it ſhould fail us in our Journey; and labouring to avoid one error we fall into another; by which it may alſo come to paſs, that a miſ-conception may paſs to our Generations, by the like misfortune that befell our Forefathers in the retention of that common conſtruction ſo long ſince received and taken for granted. Yet leſt that *Learned Gentleman* (whoſe Civilities to me I may not forget) may think me deſervedly reprovable, for making this aſſault, after his elaborate Diſquiſition and ingenious Contention; I ſhall onely *Apologize* in his *own* words, and deſire the Candor of them may be a ſatisfaction to him, and a defence to me, in theſe my weak endeavours; and they are thoſe in which he expreſſeth himſelf in his 62 page, in theſe words; *Therefore appealing from the Vulgar, I ſhall apply my ſelf to the more Literate and Judicious, by intendment not ſo tenacious of a ſpecious Tradition, but that they can with patience hear it queſtioned, and, if occaſion be, refuted: not unwilling to deſert it, if, upon tryal, it may prove unſound and ſpurious; and accounting it as thankworthy to diſcover an old Error, as to deliver a new Truth, eſpecially ſince Truth is not more often, nor more eaſily loſt by too much altercation, than Error is contracted and continued by too little.* This being by him moſt ingenuouſly urged, I will not Apologize any further; onely deſire the favour to introduce that at this time to him, which

which I formerly made uſe of to my moſt worthy friend Dr *T. B.* of *Q. C. Oxon.* upon the ſelf-ſame Subject I have now before me; and is that which the incomparable *Camden*, upon another Subject, not much unlike this of ours, uſed in an Epiſtle to *Juſtus Lipſius*: and earneſtly requeſt it may be taken (as it is) for my ſincere proteſt; That this writing of mine is not *altercandi vel calumniandi ſtudio (quod à nobis qui muſis & modeſtiæ litamus procul abſit) ſed cupiditate quâdam cognoſcendi; & veritatem ſi fieri poteſt ab injuriâ vindicandi*: and if any thing beyond or beſides this can be found in this following Tract, I ſhall willingly and readily ſtand corrected: onely before I begin, I beg the favour of the Reader, that he would not expect from me in this Work an exact Method, for in ſuch *Polemical Diſcourſes* it will prove a very hard task, even upon this ground, that the Foundation being erronious and irregular, it muſt of neceſſity follow, that the whole Superſtructure be in diſorder; by which means the undertaker cannot avoid *Tautologies*. Yet in it I will be as carefull as I can to ſhun them. The Method I reſolve upon is by Chapters, deduced into Diſcourſes upon ſeveral *Corrolaries* of M*r*. *Somner's*. In the firſt place then we will diſcourſe

CHAP. I.

Concerning first Plantations, double Portion to the Eldest amongst the Jews, *Partition Anciently and Modernly used by the* Germans, *the same custom among the* French *and* Italians; *and all this in relation to the Subject of Partition.*

M. *S.* treating of the custom of *Gavelkind*, a *Tenure by which all the Sons, upon their Fathers decease, do equally divide and share the Inheritance betwixt them*; saith, *That he is contented to admit and agree, that Provincially, and particularly here in* Kent, *we had such a custom, both before and at the Conquest*; *neither* (saith he) *am I against their opinion, who affirm the like Course and Custom current in those times throughout the Kingdom, &c.* And after presently discourling upon what by some Authors hath been affirmed, *viz. That either the Conqueror, or his Brother* Odo *brought it thither out of* Normandy, *and there planted it by the pattern and practice of his own Country*; with much reason adds, *for had it been from thence transplanted, probably it would not have been confined to* Kent, *a corner onely of the Kingdom, but have spread it self rather over the whole, by the Conquerors means, whose inclinations and endeavours to propagate and implant here the Customs of his own Country, are too eminent and notorious to be doubted of.* I may by the same reason argue, that this Custom being Current in more *antient times*, might have its being not onely in the time of the *Saxon Government*, but its beginning *long before.* And for my part I make no question,

ſtion, but in elder times it was the cuſtom of all *Europe*, if not of all the *World*: eſpecially then, when the inhabitants, by reaſon of their paucity, could ſo eaſily afford Ground and Room to their branching and ſpreading Generations. Such thoughts had *Thucydides* of the firſt *Plantations* and *Incolæ* of *Greece*; *For it is evident* (ſaith he) *that that which is now called* Hellai, (*viz.* Greece) *was not of old conſtantly inhabited; but that, at firſt there were often removals, every one eaſily leaving the place of his abode, to the violence always of ſome greater number; ----and every man ſo husbanded the ground, as but barely to live upon it, without any ſtock of riches; and planted nothing (becauſe it was uncertain when another ſhould invade them, and carry all away, eſpecially, not having the defence of Walls) but made account to be Maſters in any place, of ſuch neceſſary ſuſtenance as might ſerve them from day to day. They made little difficulty to change their habitations; ----for, the goodneſs of the Land increaſing the power of ſome particular men, both cauſed Seditions, (whereby they were ruin'd at home) and withall made them more obnoxious to the inſidiation of Strangers.* And a Modern Author out of *Homer* writing of thoſe firſt[a] Planters, ſaith, *In tuguriis atque antris habitabant, ac ſine legibus, ſine certis ſedibus, palantes, vagerentur. Et* Trojanis *temporibus in* Sicilia, *deſcribit* Homerus *illius ætatis imaginem.*

Nec fora conciliis fervent, nec judice: tantum
Antra colunt umbroſa: altis in montibus ædes
Quiſque ſuas regit, uxorem natoſque: nec ulli
In commune vacat, ſocias extendere curas.

[a] *Saluſt.* cited by Mr. *Selden* in his *Mare Clauſ. l. 1. c. 7. de aboriginibus in conjurat. Catilinæ* (ſaith they are) *Genus hominum agreſte, ſine legibus, ſine imperio, liberum atque ſolutum.*

Then

Then was it (I believe) that they prudently uſed this kind of partition, which extended it ſelf no further, than a diviſion of Stock and Goods, by it equally to enable all the Participants to ſettle to a Livelihood, and decline Rapine; which was the uſe and practice of the firſt *Incolæ*. This is alſo deſcribed by *Thucydides*, diſcourſing of the antient *Greeks*, reporting, *That they in old time, and ſuch* Barbarians *as in the Continent lived near unto the Sea, or elſe inhabited the Iſlands, after once they began to croſs over one to another in Ships, became Thieves, rifling the weaker, and made this the beſt means of their living, being a matter at that time no where in diſgrace. This* (ſaith *Thucydides* of his own Age) *is manifeſt by ſome that dwell on the Continent, amongſt whom, ſo it be performed nobly, it is ſtill eſteemed as an Ornament.* It was in thoſe elder times that Riches conſiſted, not in having a propriety to Land, but rather in the numbers of Servants to manage and defend their great Stocks and Herds of Catel. (And this I gueſs to be the reaſon, why many have rationally derived *Pecunia* from *Pecus*, and * *Pecunia* in our antient *Saxon* Laws is often made uſe of for *Pecus*) And then we muſt imagine them rather *Paſtors* than *Landlords*, ſuch who changed their Lands at pleaſure, and their habitations together, for the better accommodation of their Stocks; whoſe wealth was ſumm'd up as *Job*'s, by Servants and Catel. But as People multipli'd, and their numbers

* It was long after the firſt Plantation of our Iſland that Money was in uſe, and longer before the King's Dues were paid in Mony. For Judge *Doderidge* out of *Gervaſius Tilburienſis*, a learned man, who flouriſhed in the days of King *Hen.* 2. in his Dialogue of the obſervation of the King's Exchequer, hath in effect as followeth: *Until the time* (ſaith he) *of King* Hen 1. *the King uſed not to receive Mony of their Lands, but Victuals for the proviſion of their Houſe, and towards the payment of their Soldiers Wages, and ſuch like charges; Mony was raiſed out of the*

numbers increaſed; ſo, that they had not conveniency of wandring as formerly, by the reaſon that Lands were generally occupi'd, according to the abilities of Families in their Stocks and numbers of Catel, then did Land alſo by degrees become impropriated, obſerving nevertheleſs the ſame manner of partition of ſuch Lands, as before they had done of Goods: for as before, when they might have had Land enough, what ſhould they have done with it without Stock? ſo now when Land was impropriated, what ſhould they do with Stocks without Land? And for fear of that violence I before diſcourſed of, came firſt of all *Cohabitancia*, that is, living together in Society, which, without any diſgrace, was *Villenage*; and ſo from Families roſe Villages, and from them Cities. By this means we ſee how men came to be proprietors both of Lands and Goods: of which, *Tacitus* makes obſervation among the antient *German* cuſtoms; *Cæteris ſervis* (except thoſe onely employed about Merchandiſe) *non in noſtrum morem deſcriptis per familiam, miniſterii utuntur: ſuam quiſque ſedem, ſuos penates regit. Frumenti modum Dominus, aut pecoris, aut veſtis, ut colono injunxit: & ſervus hactenus patet.* Here was their antient manner of living, their antient manner of reſerving Rents; not unlike thoſe which I have met with in *Scotland*, and believe

Cities and Caſtles in which Husbandry and Tillage was not uſed and exerciſed: But at length, when the King being in parts beyond the Seas, needed ready money for and towards the furniture of the Wars, and his Subjects and Farmers complained, that they were grievouſly troubled by carriage of Victuals into ſundry parts of the Realm, far diſtant from their dwellings; the King directed Commiſſions to certain diſcreet perſons, who having a regard of thoſe Victuals, ſhould reduce them into reaſonable ſums of mony, the levying of which ſums they appointed to the Sheriff, taking order withall, that he ſhould pay them at the Scale or Beam; that is to ſay, that he ſhould pay ſixpence over and above every pound weight of mony, becauſe they thought that the Mony in time would wax ſo much the worſe for the wearing. Ex *Camden* & *Littleton* Treatiſe of Nobility, *pag.* 118, 119.

believe is in practice in all ſuch places where *Pecus* is in greater abundance than *Pecunia*. And for the Antiquity of Partition of Lands, we ſhall find an example thereof in the *holy Scripture*, where it ſeems to me, that the Community of the Law, and the Knowledge of it, are both taken for granted; this being a Caſe of Law reſolved upon a queſtion, and it is to be found in the 21 Chapter of *Deuteronomy, verſe 7.* where, though the Caſe be in *Bigamy*, yet there we find an *Order of Partition*, which was to be obſerved, even *nolenti patre*; *If a man hath two Wives* (ſaith the Text) *one beloved, and another hated, and they have born him Children, both the beloved and the hated, and if the firſt-born ſon be hers that was hated, then it ſhall be, when he maketh his ſons to inherit that which he hath, that he may not make the ſon of the beloved firſt-born before the ſon of the hated, which is indeed the firſt-born, but he ſhall acknowledge the ſon of the hated for the firſt-born, by giving him a double portion of all that is found with him; for he is the beginning of his ſtrength, the right of the firſt-born is his.* This Law provides, that the *eldeſt ſon*, notwithſtanding the *father's hatred*, ſhall have his right in all whereof the father was poſſeſſed, according to the *Rule of Right*, which was thus: In caſe a man had five ſons, the father's poſſeſſions were divided into ſix parts, and the eldeſt had by right two of thoſe parts: By this we may obſerve the Antiquity of the Partition of Lands and Goods, conſtituted even amongſt thoſe People to whom *God* himſelf was *Legiſlator*; and it is obſervable, that it was at the firſt Plantation of the Land of *Canaan*, where to me it ſeems, that this Law glanceth at the fundamental of Dividing, binding up the

the father to do this rectifi'd Juſtice to his ſon got of the woman hated. * Sir *Henry Spelman* (*in Verb. Gaveletum*) thinking *Gavelkind* to be of a *Saxon Original*, affirms it to be brought out of *Germany*, and deſcribes the *Tenure* of it very juſtly: *Qua omnes filii ex æquis portionibus, patris adeunt hereditatem*; and out of *Tacitus* proves it to be *Mos vetus Germaniæ*. Out of whom I ſhall add by way of explanation, what he in his Tract *de Moribus Germanorum*, ſaith, *Hæredes tamen ſucceſſoreſque ſui cuique liberi: & nullum Teſtamentum: ſi liberi non ſunt, proximus gradus in poſſeſſione, fratres, patrui, avunculi*: This *proximus gradus* argues preciſely for this antient uſage, although it had not been ſet down to be *Mos vetus Germaniæ*; and (deduced from theſe antient Times) we find it alſo to this day (even *in regno adeundo*) among the *Princes* of the *German Empire*; which was once very wittily evicted by a merry *Gentleman*, or, as ſome ſay, the *Duke's Jeſter*, who perceiving (after the death of one of the *Dukes* of *Saxony*) the *Brethren participants* (claiming according to cuſtom their *Apportionments and*

* Which Law, as Mr. *Selden* illuſtrates it, may ſeem to be grounded upon the practice of *Noah*---- Noachus *& tres filii ejus*, Semus, Chamus, *&* Iaphetus (*qui velut* Adæ, *in generis humani poſt diluvium inſtaurationem perſonam jam ſimul induerant*) *Domini pro indiviſo rerum omnium facti ſunt. Formula donationis eſt* Geneſ. cap. 9. 2. Creſcite & multiplicamini---- & replete terram. Pavor veſter & Tremor veſter erit ſuper omne animal terræ, & ſuper cunctum volatile cœli, &c.---- *Et ſcimus ex ſacris literis Tellurem* à Noachidis *ſeculis aliquot poſt diluvium eſſe diviſam.* A *Japeto* & filiis ejus diviſæ ſunt Inſulæ Gentium in terris ſuis unuſquiſque juxta linguam ſuam, & juxta familias ſuas in nationibus ſuis. *Quod in* Geneſ. 10, 25. *&* 3. *ait* Moſes, *Scilicet*, à Tanai *fluvio uſque in Mare* Atlanticum *ſeu per Magnam* Aſiæ *Occidentalis, quæ in Septentrionem vergit, partem, præter totam* Europam, *limitibus juxta familiarum numerum deſignatis, ſedes ut Domini privati accipere. Quemadmodum* Chamus *poſterique ejus, non diſſimili modo, quod* Auſtro *&* Africo *expoſitum eſt*; *&* Semus *plagas Orientales uſque ad* Indiam---- *Invaluit etiam Traditio, ipſum* Noachum, *perinde ac ſi totius Dominus in ſolidum aut Arbiter per compromiſſum fuiſſet, diſtributionis hujus ſui privati hujuſmodi Dominii poſt diluvium inſtaurationis autorem fuiſſe, idque* κατ' ἐξοχὴν, *juxta oraculum divinitus acceptum, eamque anno ætatis ſuæ* 930. (*qui à diluvio erat* 330. *& ante obitum ejus vigeſimus*) *Teſtamento firmâſſe,*

atque moribundum illud in Semi *filii primogeniti manus tradidisse, cunctosque simul monuisse*; nequis eorum fratris fines invaderet, nec injuriâ alter alterum afficeret, quoniam inde, ut discordiarum atque bellorum intestinorum causa oriretur, foret necessum. *Selden, Mare clausum, lib.* 1. *cap.* 4. To which I think fit to subjoyn what he writes in the same Book, *cap.* 8. how this partition was mystically, in the mist of their inventions observed by the Heathen: Vera sunt quæ loquuntur Poetæ (*ut recte* Lactantius) sed obtentu aliquo, specieque velata. Et sic veritatem mendacio velaverunt, ut veritas ipsa persuasioni publicæ nihil derogaret. *Fabuloso, quod diximus tempore devictis scribunt* Titanibus, sorte Mundum divisisse Deos fratres, Iovem, Plutonem, Neptunum. Iovi *Cœlum*, Plutoni *Infera*, Neptuno *Mare cessisse. Rejectis autem augis illis de sydereo hoc cœlo seu æthere, de inferiorum seu mortuorum regno, & demum de Terra tota fratrum omnium, post divisionem communi, quibus patienter sibi imponi vulgus sinebat, res ipsa quam in larvatâ hâc historiâ latere veterum aliquot docuere, alia omnino erat. Non Deos hosce, sed homines fuisse asserunt. Nec cœli, sed plagæ orientalis ex qua mortalibus lux datur (unde & superior visa est ideoque cœlum dictum)* Iovem *Regem fuisse.* Plutonem *autem occidentis quæ solis recessum Noctemque ostendit, unde inferior ea dicta & infera. Maris denique & interjectarum Insularum Dominum fuisse* Neptunum---- e Lactantio pow a scribit, Iupiter Neptuno *imperium dat Maris ut Insulis omnibus & quæ loca essent secus Mare omnibus regnaret*---- Iohannis Gryphiander *de Insulis* Cap. 31. S. 75. *de Tribus* Noachi *filiis rem totam de tribus Diis narratam fidenter capiat. Verba ejus sunt; Id haud dubio ex partitione Terrarum inter Tres filios* Noachi, *ex quibus* Japheto *Insulæ obtigerunt causam traxit.*

Divisions in the *Dukedom* with the *Elder Brother*) involv'd into high discontents, and the Council of the Nobility at a stand what course to take for a reconciliation of them, about the parting of the *Demesns* of the *deceased Duke*; This Man comes in, and borrows of the *young Duke* (who it seems hath some preference by his *Primogeniture*) his Gown, undertaking to shew them a way of Composure: The *Duke* granting (for diversion rather than from any expectation of solid counsel) his desire; the *Jester* retiring into the conveniency of a near-adjoyning Closset, with his Penknife cuts the Gown into long shreds from the shoulders to the bottom, and in this injur'd and spoil'd form returns with it on, to the *Duke* and *Council*; who wondring at this fancy, He told them, That the *Dukedom*, as yet, was like the Gown as it was lately, perfect and in order; but that

which

which was now insisted upon, was to render the *Dukedom* as he had done the *Duke*'s *Gown*. But to prevent the like mis-hap among other such Participants, in these our days the late *Duke* of *Brunswick* did (during his own life) apportion his Principality to his three Sons, leaving to each of them their Allotments intire, who also might each of them have claimed share in one and the same, provided it had not been ended by Comprimise. The like *Tenure* among the *Heritors* of *Lower Germany* is very frequent, especially in the County of *Flanders*. Mr. *S.* hath saved me the labour of shewing the *usage* of it in *France*, demonstrating how it takes place even in *Paris* it self, where it is called by the name of the *Roturier*; by which name in like sort the *Tenure* is also known and used over all the *Island of Jersey*, (excepting some few Families) and in the same manner it overspreads all the *Dukedom* of *Normandy*, this last-mentioned *Island* being formerly an Appurtenant thereof. All which considered, makes it seem to me to be nothing but the Relicks of those antient *Gallick Customs*, taken up and used upon the Plantation of this part of the *Continent* at the first, and from hence in probability it is, (as some imagine) that the *Britans* of *England* must look for their true *Ancestrie*, both as to *Customs*, *Language*, and *Progenitors*: concerning which, I shall refer you to Mr. *Camden*, whose labours have set up such a light as can never be extinguish'd, who discoursing of the first Inhabitants of *Britain*, (misdoubting the History of *Brute*) saith, *That hereupon it may be concluded, That the antient* Gauls, *Inhabitants of the Country now called* France, *and*

the Britans of this Isle, spake one and the same Language; and by necessary consequence, the Original of the Britans is to be reduced unto the Gauls; for we must confess, that France or Gaul was Peopled before Britain, as lying nearer unto Armenia---- And that the Gauls sent out and planted their Colonies all abroad in Italy, Spain, Germany, Thracia, and Asia; much more then by all reason and congruity in Britain, so near and no less plenteous than the rest. And *Dubartas* doth observe, that most probably all Plantations were by Colonies out of the *East*, which in time (as it were *gradatim*) overspread the *West* and *North*; and not * onely *France*, but *Italy* it self (*the Garden of European Policy*, which some would have to be) a Colony also out of *Gaul*, thinks no dishonor to retain her old Customs, in preserving this Tenure of Partition of Lands from her first Planters. Which was observed by one *William Thomas*, that wrote a description of *Italy*, *Anno Domini* 1549. who in his third Chapter averrs, That the Inheritance of Lands in Italy goeth by Gavelkind; that is to wit, one Brother as good part as another: So that if a Conte (which is as much to say as an Earl) have twenty Sons, every one of them is called Conte, and the youngest hath as good part in his Father's Lands and Goods as the eldest, unless it be in the Estates of Princes, as of Mantoua, Ferrara, Urbino, and such others, which the eldest evermore enjoyeth. And by this means it is come to pass, that in process of time, with change from Wealth to Poverty, there be divers Earls and Marquises without Land or Goods, (retaining nevertheless the glory of that name to them and theirs for ever. And I have read in a more Modern Author (who doth not ascribe it to any reason,

* *Martinus Zeillerus* in his *Hispaniæ & Lusitaniæ Itinerarium*, out of a description of *France*, wrote by *Franciscus de Rues*, writing of the Province of *Bigorre*, tells us by way of wonder and special remarque, that *Mos hic obtinuit, ut primogenitus omnium bonorum paternorum hæres evadat, sive nobilis sive ignobilis.*

reaſon, but onely relates the bare State) that there be ſeveral *Counts* in *Italy*, who at the ſame time (ſuch is the ſmallneſs to which their Eſtates are reduced by this partition) are not able to maintain a *Horſe*, a *Hound*, and a *Whore*. Mr. *Thomas* hath hapned right upon their Tenure, though he denominates it by ſuch a Term as is utterly unknown to any *Italian*, but obſerves, that the Tenure is generally among the Families there, excepting thoſe who of latter days, by force or fraud have wreſted themſelves from the Dominion of the *Roman Empire*, and in ſuch places the eldeſt Son inherits, whilſt the other Families ſtill maintain their old Cuſtoms, though to the ruine and ſubverſion both of Names and Families. Which Cuſtom cannot fancy to be an Innovation of latter Ages, but an Impreſſion from the antient Inhabitants, when firſt they did ſpread themſelves in *Colonies* over *Latium*. This, for the proof of the general uſage of this Partition of Lands in moſt parts of *Europe*, and the probability of its uſe amongſt the firſt Planters of any Nation: Proceed we next to ſhew, as being very conſonant to the inveſtigation of the Original of this Tenure,

CHAP.

CHAP. II.

The Conditition of the Britains *when* Cæſar *found them; That* Gavelkind *was antiently among them: Of (the* Britiſh Judges) *the* Druides, *of their* Bards: *Of their* Tylwyths: *Of their manner of Partitions and Laws concerning their* Gavel.

Julius Cæſar reſolving upon a War againſt the *Britains*, for their frequent aſſiſting the *Gauls*, had in the firſt place to do with the *Cantiani*, whom he Ennobliſheth with the *Character* of being more civil than the reſt of the *Britains*, and renders the reaſon to be their ſite upon the Shore, and ſo the more adapted for Traffick and Commerce with the *Gauls*, who were generally then more civilized than they. Theſe Parts upon *Cæſar's* * ſecond Invaſion, firſt yielding themſelves unto him: (the Second Invaſion I term it, for he had but ill fortune in the firſt, as *Lucan* hints it in that bold Verſe,

Territa quæſitis oſtendunt terga Britannis.

* *Beda cap.* 2. writing of *Cæſar's* preparations to invade *Britanny*, ſaith, *Navibus adfloginta præparatis in* Britanniam *tranſvehitur, ubi acerbâ primùm pugnâ fatigatus, deinde adverſâ tempeſtate correptus, plurimam claſſis partem, & non parvum numerum militum, equitum verò penè omnem diſperdidit------ Iterum in* Britanniam *primo vere tranſvectus, dum ipſe in hoſtem cum ingenti exercitu pergit, Naves in Anchoris ſtantes, tempeſtate correptæ, vel colliſæ inter ſe------ diſſolutæ ſunt. Ex quibus* 40 *perierunt, cæteræ cum magna difficultate reparatæ ſunt.* Cæſaris *equitatus primo congreſſu à* Britannis *victus; ibidem Labienus Tribunus occiſus eſt.*

Neither can I yield that *Cæſar* made a full Conqueſt of our Iſle, for when *Horace* flattered *Auguſtus*, he then calls *Britanny untouch'd:*

Intactus

Intactus aut Britannus ut deſcenderet
Sacra catenatus via.

And *Propertius* writes thus,

Te manet invictus Romano Marte Britannus.

Tacitus is more plain than all the reſt, for he writes *Cæſarem Britanniam tantum oſtendiſſe non tradidiſſe Romanis.*) In this ſmall Cantle or Parcel of our Iſle, * *Cæſar* found ſeveral petty Kings, which would give me ground to *Collect*, that ſuch Fractions were long before *Cæſar*'s time, the proceed of this Tenure, and rationally I cannot imagine, it ſhould be the iſſue of any thing elſe; for if the Story of *Brute* be allowed, it is obſervable, that he firſt ordered a Partition of this our

* The ſame Diſcourſe hath Mr. *Selden* to another purpoſe, concerning theſe four Kings, which becauſe it is to my purpoſe in ſeveral particulars of this enſuing tract, I ſhall here adjoyn as a Marginal note, to which I deſire the Reader to have reference, —— He ſaith thus, *unde ſequitur etiam eos qui in* Britanniam *è Galliis Druidum diſciplinæ diſcendæ cauſâ frequenter trajicere ſoliti, ità ut niſi temeritatis pœnæ obnoxios, veniâ ab inſulæ Regulis non impetratâ, feciſſe. At Regulis, inquam, maritimis: Nam non unius imperio tunc ſuberant* Britanni, *Maris Domini fuere, qui maritimis civitatibus ſeu provinciis imperabant: Veluti Cingetorix, Carvilius, Taximagulus, Segonax in Cantio; alii in Regnis, Belgis, Durotrigibus, Dumnoniis, Trinobantibus, Icenis, Coritanis (populis qui* Suſſexiam, Surriam, *agrum* Hamtonienſem, Dorſetiam, Devoniam, Cornwalliam, Eſſexiam, Norfolciam, Suffolciam, Lincolnienſem *agrum occupabant) id genus cæteris. Nam & Cæſar ipſe interiorem partem Inſulæ ab iis incultam ait, quos inibi natos traditum dicebat; interiorem autem partem ab iis qui prædæ ac Belli inferendi cauſa ex Belgio tranſierant, Tametſi verò ita in Singularia diſtraherentur imperia tunc oræ maritimæ, nobilioribus adverſus hoſtem, ſeu ad mare tutandum, dubitari nequit, Quin communi meruerint ſimul conſilio; quemadmodum itidem in aliis rebus in exteros hoſtes bellicis; ut videre eſt apud Cæſarem, ubi ſumma imperii bellique adminiſtrandi communi Britannorum conſilio permiſſa eſt Caſſivellauno.* Lib. 2. cap. 2. Mr. *Selden* applies all to his Subject of the Dominion of the Sea, yet gives an account of their Fractions, of which hereafter.

Iſland

Iſland unto his three Sons, *Lhoeger*, *Camber*, and *Albanact*; which kind of Partition, if in the leaſt probable at that time, or for ſome long time after, it is no wonder, that by the time *Julius Cæſar* found us out, he ſhould meet in that quarter of the Iſland, with ſo many Partialities and Fractions; of which thing himſelf took a ſerious remark, and ingenuouſly declares it to be one of the main occaſions of facilitating his Conqueſts over that part of our Country; for (ſaith he) *Dum ſinguli pugnabant, univerſi ſunt victi*, being divided, they could not conveniently come together in Council, or with aſſiſtance to repell the common danger; and notwithſtanding he calls them rude, and reports that they had their Women in common; Yet cannot I find, but that they much inſiſted upon their Proprieties; and certainly, their Lands were not in that Predicament: they were in their Perſons, Valiant; for their Valour was ſo Renowned, that the *Roman* Souldiers, ſome time after *Cæſar*'s Life, through fear of them, made a Mutiny, when they underſtood they were deſigned for *Britain*, murmuringly alleging, that their Maſters ſent them out of the World to Warr; ſo greatly was the *Britiſh Valour* in repute among their very Enemies. Their policy was not to be deſpiſed, for their *Druids* were not only their Prieſts, but their Judges; and *Camden* out of *Dio* writes plainly, that they had their own Government and Laws. *Annos enim plures ab hoc Cæſaris ingreſſu; hæc inſula (de Britannia ſcribit) ſuis regibus conceſſa; & ſuis legibus eſt uſa:* Theſe *Druids* were moſt famous in *Britain*, though they were at the ſame time of great account

account in * *Gaul*, of whom *Cæsar* thus Discourseth; *Ii certo anni tempore, in finibus Carnutum, quæ Regio totius Galliæ media habetur, considunt in loco consecrato; huc omnes undique, qui controversias habent, conveniunt: eorumque (viz. Druidum) decretis & judiciis parant; Disciplina in Britannia reperta atque inde in Galliam translata esse existimatur*; He saith, that *Gaul* had the Discipline of the *Druids* out of *Britain*; and in another place, this *Britain* is accounted the *Gymnasium* of the *Druids*; where were taught not only the *British*, but the *Galliek youth*; which Learning of theirs was not preserv'd in Books, or by Writing, but as *Cæsar* reports, *Magnum ibi numerum versuum ediscere dicuntur*: so that those things that they delivered to their Disciples as sacred, were not committed to Paper, or Parchment, but unto Memory; and for the easier fixing of them there, were made into Verse. But now let us consider their *Judicial* employments, which *Cæsar* also in a *short Epitome* bestows upon us, in these words, *Nam fere de omnibus controversiis publicis privatisque constituunt; si quod est admissum facinus, si cædes facta, si de hæreditate, de finibus controversia est, iidem discernunt, præmia pœnasque constituunt; si quis privatus aut populus eorum decreto non steterit, Sacrificiis interdicunt; hæc pœna apud eos est gravissima*. They kept a *Court* of *Right*, as well as a *Criminal Court*, where they did determine almost of all

* *Prolegom.* D. Briani Walton in *Bibl. Polyglot.* t. 5. 14. Where he Writing of Languages, saith, *Quædam tamen inter linguas mihi cognitas quasi cardines è quibus multæ aliæ pullularunt à doctis recenseantur*, —— Tartarica, *quæ longè per Septentrionem vagatur, ad quam multæ* Europæorum & Asiaticorum *linguæ antiquæ referendæ, si* Boxhornio *credendum, ut antiqua* Gallica, & Britannica, *cujus reliquiæ adhuc in* Wallia *manent. Et in* Sect. 20. Walli *nostri (scribit) sive* Cambro-Britanni à Saxonibus *inter-asperos & incultos montes depulsi, linguam longè antiquiss.* Britannicam *minimè permistam, adhuc conservarunt, ut scribit Doctis:* Cambdemus. *Imo ipsis persuasum est linguam suam nunquam interituram, ut ex* Taleſini *carminibus liquet.*

Cæs. *Com. de Bello Gallico, Lib. 6.*

all *Controversies, publick or private*, and what they adjudged Crime; if Murder were committed, if there arose Controversies of Hereditary succession, or if bounds were in question, they took Cognizance of all, and awarded Punishment, or Reward, &c. but that of which I would have an especial Consideration, and Animadvertency, is in these words, *Si de Hereditate, de finibus Controversia est*; can Controversies of Inheritance, or Hereditary Succession arise, where one of the Sons by Law and Custom Inherits? can there be any Considerable question of bounds, where one Son takes Possession of all whereof his Father Died seised, excluding his other Brethren? in this small Summary of Judgments, under the Cognizance of the *Druids*, *Cæsar* placeth these as the most remarkable Customs and eminent Arricles. The controversies of Hereditary succession are not considerable where the Land descends to one Son; for if it be according to Custom, that it should so descend, I know not with whom the Controversie should be, it cannot be with any of his Brethren; for they have no right, except it be by our *Gavel*; nor with his Sisters; for in case the Father in his Life-time hath not provided for them, they are left to his mercy; so that the Controversie, (if any there be) where the Land descends to the one, excluding all the rest of the Sons, must be with himself. The controversies of single Heredation, though in Collateral lines, could not induce such a remark, and notice from *Cæsar*; because such questions fall out but rarely, even in this well peopled Age; neither doth the *Tryal* upon a *Mordavit* in our days, commonly occur. But put the

Contro-

Controverſies together, (as *Cæſar* hath joyn'd them) that were ſubmitted to the Judgment and Sentence of theſe *Druids*, which I am perſwaded are of one and the ſame Nature; for bounds betwixt Neighbour and Neighbour, may be in queſtion; but this (I ſay) muſt not be ſuppoſed to be wholly Disjunctive from the reſt; for thus it is expreſſed, *Si de Hæreditate, de finibus Controverſia eſt*; it is not with the Connexion of *Aut*, *Or* and *Of*, but lies plainly in Conjunction, and Bounds hath ſome probable reference to the Inheritance, which being to be parted by our *Gavel* among the *Brethren*, would require much uſe of the Wiſdome and Moderation of the *Druids*, and alſo of their Authority, to ſet out to every *Brother* or Participant his portion or part, without giving cauſe of Diſtaſt to any. For we ſee, where *this Tenure* at this day is in Force, that in caſe the Proprietor of ſuch partible Lands, leaves onely but one Son after him; there can be no Quarrel, but that, *that* onely Son enters upon, and poſſeſſeth the Land without Competition or Corrivalſhip. Thus in relation to the *Druids*, the *Judges* in thoſe Ages, I have given a ſhort account: a little after *Cæſar*'s time, they ceaſed in *Gaul*, for * *Pliny* ſaith, that *Tiberii Cæſaris Principatus ſuſtulit Druidas eorum*; yet in *Britain* they were in requeſt long after, even then, when the *Romans* had almoſt made perfect their Conqueſts, by the atchieving of that memorable Battel in the *Iſland* of *Mona*, (at preſent denominated *Angleſey*.) We now proceed in our Diſcourſe to the *Bardi*, who think themſelves to be the *Loca tenentes Druidum*. Theſe were the *Britiſh Heralds* and *Regiſters*, as * *Ammian. Marcellinus* records them, whom with the

* Pliny, *Lib.* 30. *c.* 1.

* *De Galliis.*

Druids and the *Eubages*, he thus makes famous; *Per hæc* (ſaith he) *locis hominibuſque paulatim excultis, viguere ſtudia laudabilium doctrinarum incœpta per Bardos & Eubages & Druidas; & Bardi quidem fortia virorum illuſtrium facta, heroicis compoſita verſibus, cum dulcibus lyræ modulis, cantitarunt. Eubages vero ſcrutantes ſumma & ſublimia naturæ pandere, conabantur; inter hos Druides ingeniis celſores*, &c. And of theſe *Bards* it is, that *Lucan* in a few Verſes hath left ſo Worthy and Ancient a Memorial, which I will not ſcruple to Tranſcribe.

Vos quoque qui fortes animas belloque peremptas
Laudibus in longum vates dimittitis ævum,
Plurima ſecuri fudiſtis carmina Bardi.

Of whom Mr. *Camden* alſo adds, *Qui præterquam quo eo munere funguntur, etiam prætexendis Genealogiis operam imprimis ſtudioſe navant*; The carefulneſs of theſe *Bards* from Age to Age hath been ſo great, that there are none who look into ſuch *Britiſh* Hiſtorical concernments, but eaſily obſerve it; and alſo ſee by that Learning and Knowledge that is extant in their Writings, how fit they were to take Care and Cognizance of ſuch matters as concerned their Office, in relation to deſcents upon the Tenure of Partition. And although it may take up too much Paper for this ſmall Volume well to ſpare, yet will it be much to our purpoſe, to underſtand their manner of Recording their Lines and Genealogies, ſo as to fix their Pedegrees right, and to preſerve them free from confuſion in their Collateral lines; By which care and art, (notwith-

withstanding their Tenure) they kept all unconfounded. Then first know, that their Genealogies, especially of their principal Gentry, runs seldome further than to certain Tylwyths, which as *Doctor Davies* expounds it, signifies, *Familia, famulitium & Tribus*, which Word takes its derivation either from Tyle (i.e.) *Locus, ubi stetit domus, vel locus ædificandæ domui aptus*, or else from Tylath, which signifies *Trabs, Tignus*; whether you take it in the first Derivation, then it will afford us the Signification of a *place whereupon to build a House*: or if in the second, then doth it hold out in its Signification, a *Beam in the Building*; either of which will serve our present purpose: for Tylwyth is a *Tribe*, or *Family*, branching or issuing forth of another, by that which we in our *English Heraldry* call *second* or *third Houses*; so that in case, the *Great Paternal stock* spread or branched it self into several Tylwyths, or Houses, these *Bards* preserved the Memorial thereof, and observed this method in their ordinary Memorials of Families. They carry no second or younger House further than his Tylwyth, (herein they respect Primogeniture) and there cease; taking it for granted, that the great Paternal stock, was, or should be so well known, that there should be no need at all to mention it, referring all the Cadets of a Family, (and sometimes also the Elder Family it self) to their Tylwyth; by this, Creating in them an exact Propriety to that Stock; which way (I say) was carefully preserved by these their *Bards*. A Specimen whereof (though not of great Antiquity, yet being exhibited under the hand of one that writes himself *Bard*,) I shall present to you, and it is thus.

Mainerch

Mainerch ap Driffyn Lord of *Brechnock*,

1.

Blethin ap Mainarch *Lord of* Brechnock, *was together with King* Rees *his Brother-in Law, with many other Gentlemen, slain by the* Normans *by West of* Brechnock, *near the River of* Uske; *the place is to this day called the* Battel.

Ellen *Daughter of* Theodore *King of* South-Wales, *and Sister to that noble* Rees ap Tudore *or* Theodore.

2.

Driffyn ap Mainarch.

3.

Drympeck ap Mainarch.

Moreiddig Warwin: *he was born with an Adder about his neck, for which cause he forsook his Paternal Coat, and gave the three Childrens Heads, their Necks enwrapped about with so many Snakes Proper, &c. and of him are issued the* Vaughans *of* Brechnock-shire, *and many other Gentlemen, who are termed* Tylwyth Moreiddig.

1.

Gwgan ap Blethin.

2.

Cadivor ap Blethin.

Gryff. Gwyr: *from whom the Families of* Brechn. Glamorg. *and* Carmarthenshires *come: called* Tylwyth Howel-Melyn, *that is,* Howel-Melyns *Posterity.*

Owen Gethyn, *from whom many Gentlemen in* Brechnock-shire *are descended, called* Tylwyth Owen Gethyn, *that is, the Posterity or Tribe of* Owen Gethin.

Here

Here you see this *Bard* hath not onely vouchsafed unto us the **Tylwyth** arising out of this short Pedigree, but also the very meaning of the word in the *English*. Thus were their Memorials preserved by them, who the better to infix them, and also for a greater *Stimulum to Heroick Actions*, in their Songs deduced from Age to Age delivered to them from their Predecessors, did celebrate the Praise of their Worthy Men; which Custom, in some places, they yet retain. And of so great account were these *Bards*, that by the *Laws* of **Howel-dha**, an honorable Provision was made for the chief of them in the Court, who was to reside near the *Person* of the *Prince*; and of so great repute was this Place or Office, that to the Dignity was annexed a *particular Refugium*. The use of these **Tylwyth** was to shew, not onely the Originals of Families, as if their work had been meerly to run over a Pedigree, but the several Distinctions and Distances of Birth, that in case any Line should make a failer, the next in degree (which is the same with the *German Proximus Gradus*) may make an unconfounded use of their interest, according to the Rules of Partition by them **Gavel**. I told you before, how in all their Pedigrees there was a preference of Primogeniture, which was onely in honor and respect, and not in unequal divisions of the Patrimony; for in these, the better to carry a light and lustre, they pointed at the Pen-cenedl of each Family, who, as the *Prince* of their *Tribe* and *Kindred*, was always had in much honor and reverence among them. Which respect was like that wherewith the *Jews* did honor their *Chiefs*, mentioning them with that title of respect, in calling them

sometimes

sometimes *Heads* of their *Father's house*, other-while *Chief men*; and in other places of Scripture they are made known by this account, *viz.* By their *Generations*, after the *House* of their *Fathers*; and in this form did they *inroll* their *Bands* of *Soldiers* for the *War*, for it is written in the *Chronicles*, that *David assembled all the Princes of Israel, the Princes of the Tribes, &c. unto Jerusalem.* In like manner it is recorded in *Numbers*, that *the name of the Israelite that was slain was* Zimri, *the son of* Salu, *a Prince of a chief House among the* Simeonites. And in the following verse it is remembred, that, *The name of the Midianitish woman that was slain was* Cozbi, *the daughter of* Zur; *he was head of a People, and of a chief House in* Midian. Where this order of Partition was in force, there is it most necessary that *Genealogies* should be most exactly kept; and by the *Mosaical Law* so great care was taken in this point, that the *Tribes* were not permitted to have *mixtions* together by *Inter-marriages*. And although in many of the *High-lands* of *Scotland* they have lost this Tenure, yet have they with much affection retained their respects to the *Heads* of their *Clans*, calling them their *Chiefs*, to whom in former times they gave more respect, and were with more obedience commanded, than by their *Princes*. The *Pedigree* before recited I told you I gave, to shew their manner of recording their *Families* of *Gentry*, distinguished from their **Pen-cenneil**. I have another that shows how tenaciously their **Gavel** was in force among them, even in *Regno adeum*, and how by it, in process of time, that *Principality* came to great loss and destruction. **Roderick** the *Great*, being *Prince* of all *Wales*, had three sons, among whom he

1 Chron 7. and 8 chapters

Numb. 25.44.

Divided

divided his Territory; which three ſons were called y Tri Twyſoc Talaethiac, (that is) *the Three Crowned Princes*: becauſe every one of them did *wear* upon his *Bonnet* or *Helmet* a *Coronet* of *Gold*, being a *Broad lace* or *Hatband* indented upwards, ſet and wrought with precious Stones, which in the *Britiſh* was called **Talaeth**, by which name the Nurſes do call the *Head-band* wherewith a Childs head is bound uppermoſt, at this time, as *Doctor Powel* hath critically obſerved. But that it may be the more plain and perſpicuous, take it *Genealogiſtically*, thus:

Roderick *furnamed the* **Great** *Prince of* **Wales.**

1. **Mervyn** *Prince of* North-Wales.

2. **Cadelh** *Prince of* South-Wales.

3. **Anarawd** *Prince of* Powis.

Howel-dha, *in whom the Territories of* North-Wales *and* South-Wales *were united, and was the ſecond Legiſlator of the* Britans, An. Chriſti 942.

After ſeveral Succeſſions, which I purpoſely omit to ſave the labour of needleſly lengthning the Line, there from him proceeded one **Conbyn**-

Blethin ap Conbyn, *who being Prince of* Powiſ-land, *divided it to his two ſons*

1. **Meredith ap Blethin**, *who divided his apparitment of* Powiſ-land *betwixt his two ſons*

2. **Cadogan ap Blethin.**

Madoc

1. 2.

Madoc, *who had upon the Division that part that was called* Powys-Madoc, *or* Madoc *his* Powis; *He died* Anno D. 1160. *at* Winchester, *and was called the Prince of* Powys: *he was a true friend to the King of* England.

Sulanna, *daughter of* Gruffyth ap Conan *Prince of* North-Wales.

Gruffyth *Prince of* Powys, *had another share of* Powys *land.*

1. 2.

Owyn Brogynton, *a base son of* Madoc ap Blethin, *had* Dynmael *and* Edeirneon.

Gruffith Maelor *had for his share* Bromefield, Yale, Hopedale, Chirk, *&c.*

Owen Gachan *had* Mechain-Iscoid, *&c.*

And *Doctor Powel* in his *Additaments* to the *Cambrian History*, in those (I mean) that he hath set betwixt the years 808. and 810. gives a full Discourse of the *Primitive* use of this *Tenure*, and also of the Modern abuse thereof. For upon those great Feuds that arose betwixt the Descendants of *Conan Tindaethwy*, upon this account of Partition, He writes thus. "*Here I* "*think fit to say somewhat of the* Custom *and* Tenure "*of* Wales; *whereof this mischief grew*, (viz. *the* "*Feuds betwixt Brethren, the Rending the Government* "*in pieces*, &c.) *that is, the Division of the Father's* "*Inheritance amongst all the Sons*, *commonly called* Ga-"velkind; **Gavel** *is a* British *term, signifying a* Hold, "*because every one of the Sons, did hold some Portion of* "*his*

"his Father's Lands, as his Lawfull Son and Succeſſor. "Thus was the cauſe, not only of the overthrow of all the "Antient Nobility in Wales, (for by that means, the "Inheritance being continually Divided, and Subdivided "amongſt the Children, and the Children's Children, &c. "was at length brought to nothing) but alſo of much "Bloodſhed, and unnatural Strife and Contention amongſt "Brethren; as we have here an Example, (viz. the Hiſtory of the Deſcendants of Conan Tindaethwy) and "many other in this Hiſtory, (He means in Lancarvan's "Britiſh Hiſtory.) * This kind of Partition (Dr. Powel "adds) is very good to plant and ſettle any Nation in a "large Country, not Inhabited; but in a populous Country, already furniſhed with Inhabitants, it is the very "Decay of great Families, and as I ſaid before, the cauſe "of Strife and Debate. The reading of this paſſage was it, which, many years ſince, firſt ſet my thonghts at Enmity with the *Saxon* Parentage of *Gavelkind*; I mean that of ȝiɼ-eal-cynne, *give all Kyn*. This it was that gave me not only ſome examples of the uſe of it among the *Welch*, but alſo an interpretation of half the name; for I find the *Doctor* himſelf in theſe Additaments to this *Welch* Hiſtory, even in this paſſage I have made uſe of, ſtartled at the latter part of the Compoſition; for he hath written (*Kind*) in ſmall different Letters, whereas **Gavel** is wrote in great. But to return to the *Pedegree*, by which you plainly perceive the uſe and the effects of this *Britiſh* **Gavel**, and not only ſo, but the partition, as to deſcent alſo to the Legitimate Children; for the *Continuator* of *Lancarvan's Hiſtory* hath this note upon *Owen Brogyntyn*, (viz. his having ſuch an Apportionment of his

* I could wiſh that thoſe Renowned *Engliſh* Plantations in *America* would examine of what avail this in probability and policy may be to them, and in particular to the moſt famous Plantation of *Virginia*, the moſt fertil and moſt conſonant to *Engliſh* bodies, of any whatſoever, and will prove of greateſt uſe in time to the *Engliſh* Nation.

Father's Lands, being a Bastard,) "*That base Sons* "*were not basely esteemed, but with the other had part of* "*their Father's Inheritance; and so had others through* "*Wales, especially if they were stout and of noble Cou-* "*rage.* I confess this passage did at first stumble me, with some others of the like nature, till seriously observing and comparing together the Laws of Howel-dha, I had as to the *British* History, a great deal of light administred, which inforced me from my Incredulity, to admire the Observer or Continuator: I gather'd from this Law of Howel-dha, (*Si villanus Regis filium vel optimatis, ex licencia Regis alendum fuscepcrit; filius ille particeps erit Hæreditatis cum filiis Villani post mortem ejus,*) That a *Bastard* may as probably receive a part in his *Father*'s Estate by Law, as that a *Foster-child* should have a right to a Division of his *Foster-father's Land*: But in these you see, by what means the *Principality of Wales* crumbled to nothing; who gave as much opportunity to the *Saxons* and *Normans* by this division to Conquer them, as by the like Fractions their *Ancestors* did give facility and occasion to the *Romans*. But to return to our purpose; This last division of *Rodrick* the *Great*, mentioned in our Discourse, is said to be done, *According to the custom of Wales*, which being so, then certainly *Partition* is *according to the custom of Wales*. And this I further Collect, that it was not altogether the Land, which in former times was so much desired, (which I gather from that vast proportion of waste Land at this day in that Territory) or was æquivalently considered with the Cattel and Stock wherewith that Land was to be managed; for those *Mulcts* and *Impo-*

sitions

ſitions of Fines and Amerciaments, mentioned in the *Laws* of Howel-dha, were very ſevere; becauſe then they were impoſed, and did proceed from ſuch things as were their *greateſt Riches*; and was not only in Money, but principally in *Cattel* of all ſorts, which was their *Stocks*; and this leads me to examine whether, and to ſhew that

CHAP. 3.

Neither the Romans *nor the* Saxons *altered our antient Laws. Of the antient honour and uſe of the* Reguli. Danelæge, Merkenlæge, *and* Weſtſaxonlæge, *what they were.*

MR. *S.* ſaith, p. 61. *For my part I conceive it* (*viz.* Gavelkind) *may carry an Antiquity far greater than the time of the* Norman *Conqueſt, &c.* If this be conceded, I ſhall then go a little further with my Conceptions in this point, and labour to make it probable, that the *Laws* and *Cuſtoms* of the *Britains* were not *altered* (at leaſt ſo much, as by the general current of Writters is commonly received) by either the *Conqueſts* of the *Romans*, or *Saxons*: Not that I deny, but that each of them made ſome ſort of Impreſſion upon them in relation to their *Manners*, *Laws* and *Cuſtoms*, though the main Body of them ſtood firm and unſhaken; and firſt for the *Romans*, who in thoſe times were much Diſeaſed with that Itch of Conqueſt, and too too great a deſire of Glory, by it being carried out ſometimes to attempt divers great things,

things, upon the account of Fame, that were even unprofitable; yet was it not their Manner or Cuſtom, when they ſubdued any *Country*, to *alter* the *Cuſtoms* or *Laws* thereof; but rather to ſettle the Conquered, upon a Foundation of enjoying their Liberties, only being ſubject to the *Title* of *Conqueſt*; ſo was it in *Jury* with the *Jews*, to whom in *Holy writ* you find allowed many things, according to their Cuſtoms, both in permitting of the *Ceremonies* of their *Religion*, and alſo in *Judicial Affairs*: In the like manner dealt they with ſome of the *Grecian Common-wealths*: The *Roman* Conqueror ſhewing to one of them a better *Diviſion* of their Country, in relation to the more orderly *Exiſtency* of their *Republick*, than ever they themſelves had before taken notice of; and not only ſo, but told them, (being at that time aſſembled, and expecting ſome ſevere Doom) that if they would proceed in their antient way of *Government*, they ſhould have their Liberty, provided they owned the *Romans* their Superiors in right of Conqueſt; who only deſired ſuch a power over them by their *Garriſons*, (the burden and charge whereof ſhould not be conſiderable to them) that in caſe they Rebelled, thoſe they would keep as Doors and Inlets, by which they would pour in ſuch Forces, as ſhould reduce them to their peace: But that ſuch a Defection, ſhould be the occaſion of the loſs of their Freedome. And after this manner was the common practice obſerved by the *Romans* in their Conqueſts. But to return home, I find not that either *Cæſar* in his *Commentaries*, *Lucan*, or *Tacitus*, mention or point out, any *Alteration* in the *Religion*, or in the *Cuſtoms*, or ſo much as the *Ceremonies*

monies of the *Druids*: and though I muſt yield, that from the *Romans* the *Britains* had moſt part of their *civility*, in the *uſe* of *Habits*, *manner* of *Warring*, *Buildings*, *Baths*, &c. yet can I not Collect any innovation as to their Laws; and can boldly affirm, that in the midſt of theſe Alterations, as we had the *Terms* of *Art* and *Appellations* of things from them, ſo again the *Britains* left ſome reliques of their Language among the *Romans*; for what, the Inhabitants of this Iſland had, that to the *Romans* were reputed Rarities, to them did they accept of *Britiſh* appellations, ſmoothing them into their own *Idiom*. The *Britains* at that time were famous for their Art in Contexture of *Baskets*, being things very much by the *Romans* deſired, who hearing the *Britains* calling them in their Language **Baſgawd**, or **Baſcoed**, notwithſtanding they had words of their own whereby to expreſs the like thing, as *Sporta*, *Cophinus*, *Corbis*, yet *Martial* makes uſe of the *Britiſh word*, making it to ſpeak *Latin* in this his Diſtick:

Barbara de pictis venit Baſcauda Britannis,
Sed me jam mavult dicere Roma *ſuam.*

So *Caterva*, *Britannicè*, **Caturfa**. *Trimarcia*, *Brit.* **Tri-march**, (i.e.) three Horſes. *Eſſedum*, *Brit* **Eſſen**. *Candela*, *Brit.* **Canwyll**. The ſame original may you find of theſe words, *Apennine*, *Armorica*, *Glaſtum*, *Bardo-cucullum*, and of many others, which Mr. *Camden* hath Collected, and for brevity

Seld. *Mare clauſ. in interſerend. in fine. Sic ex vocibus illis*, Geſum, Trimarcia, Eſſedum, Petoritum, Braccæ, *id genus aliis ſive à* Gallis *ſive à* Britannis *in* Romanorum *linguam receptis, notiſſimum ipſarum rerum quas ſignificant ſive in* Galliis *ſive in* Britanniis *uſum fatis indicari à nemine non agnoſcitur.*

vity ſake I omit. Return we then to ſhew how that the *Romans*, after a long Warr being Victors, did not alter the *fundamental Conſtitutions* or *Laws* of the *Inhabitants* of *Britanny*; all Hiſtories that relate to thoſe Ages, affirm, that they had their Liberty as to the *Worſhip* of their *Gods*, of whom they had ſeveral, with their *Fanes* and *Flamens* devoted unto them, and unknown to the *Romans*, (who multiplied as many Gods, even thoſe alſo of the Nations they Conquered, as any people in the known World:) And at the ſame time, (if our Hiſtories fail us not) the *Britains* had the *glorious Goſpel* of *Chriſt Jeſus*, ſhining in ſeveral parts of this Land, by the Preaching of *Joſeph of Arimathea*, even at ſuch time (I ſay) when the *Romans* were ſcarce warm in their new Conqueſts, as the *Antiquities* of *Glaſtenbury* do import. Conſider alſo the Hiſtory of *Saint Alban* our *Proto-martyr*, who had been participant of the *Honour* of the *Roman Military Girdle*, whoſe Death is not to be imputed to any *Act* of the *Roman Government*, but wholly to the *Unrulineſs* and *Impetuoſity* of a *popular Tumult*, which may ſome times happen in well-formed Governments. And ſo great reſpect had the *Romans* to what they thought juſt, that where they had ſpread their Conqueſts, they would never intermeddle to impeach propriety. It was not the *Government*, nor the *Proprætors*, that did that Injury that exaſperated *Boadicea*, the Queen of the *Iceni*, but the *Toll-gatherers*, and *Publicans*, who attempted not to force her Land from her, upon the pretence of *Conqueſt*, for her Title to it was too well known, than to be invalidated by ſuch a deſign; but they endeavoured, under the *pretext* of a *falſe will* of

her

her *Husbands*, to create as falſe a Title to *Cæſar*, which certainly confirms their permitting of propriety; for otherwiſe, by virtue of their Conqueſts they might have ſeiſed it, without going about to make a Title by a pretended Will: The effect of which action was ſuch, and had ſo great an *Influence* upon the *Spirits* of the *Britains*, that it well near ſent the *Roman Eagles* flying out of this Iſland; and ſtill doth leave a remarque to Poſterity of the great Senſe our Anceſtors had of their Rights and Liberties, even in thoſe Elder, Rude, and Unpoliſh't times. They doubtleſly would not have run thoſe hazards for the *Roman Laws* or *Rights*; what they did, was out of the ſenſe of their *own* Liberties, which is made out by the ſpeech of *Boadicea* to her Army, tranſmitted to us by the care of ſo Grave an Author as * *Tacitus*. The quarrel was, their Liberties violated, upon which ſhe thus addreſſeth her ſelf to her *Britains*; *Solitum* (ſaith ſhe, when the two Armies were Ranged) *quidem* Britannis *fœminarum ductu bellare, teſtabatur; ſed tunc non ut tantis majoribus ortam regnum & opes, verum ut unam è vulgo; libertatem amiſſam, conſectum verberibus corpus, contrectatam filiarum pudicitiam ulciſci*; and concludes with a Maſculine courage; *Si copias armatorum, ſi cauſas belli ſecum expenderent; vincendum illâ acie; vel cadendum eſſe: id muliebri deſtinatum; viverent viri & ſervirent.* She endeavours to clear the *Britains* of their fears and doubts, which may ariſe among them, from her *Feminine Conduct*; And the more to fire their Valour, declares to them an incitement from their loſt Liberty: and although the ſucceſs anſwered not her reſolution; yet hence we may Collect, with how much

* *Annal. lib.* 14.

zeal and courage they did labour to assert their freedomes, which must (I say) be those that they enjoy'd by their proper and antient Laws and Customs; and in this affair, (before the Battel) to such a height their just rage was incensed, that like a furious Torrent, they over-ran several Countries, over-bore the *Garrison* of *Verolamium*, and destroyed *Camolodunum*; rasing to the ground, the Temple therein *Dedicated* to *Divus Claudius*, which *Tacitus* saith, was *quasi Ara æternæ dominationis*; of which a *Poet* of that Age useth this expression unto him,

Oceanusque tuas ultra se respicit Aras,
Qui finis mundo, non erit imperio.

Some time after this ill success of *Boadicea*, *Caractacus* the *Prince* of the *Silures*, in the like sense did deliver himself to his Souldiers; even then when he was about to fight the last deciding Battel for the *British Liberty*; though he Capitulates many violations that they were likely to suffer, in case *P. Ostorius* with the *Romans* should be Victors: Yet mentions not at all the change of Laws, which had it been the practice of the *Romans*, without question had been here accumulated with all the aggravations imaginable. But take it as *Tacitus* hath reported it; *Caractacus huc & illuc volitans, illum diem, illam aciem testabatur, aut recuperandæ libertatis, aut servitutis æternæ initium fore: vocabat nomina Majorum, qui Dictatorem Cæsarem pepulissent; quorum virtute vacui à securibus & pributis intemerata conjugum & liberorum corpora, retinerent.* These were their fears, these their doubts; the recovery

very of their Liberty and Freedome from bondage, were the arguments then uſed to inflame their Valour: no mention of the loſs of their Laws, as not fearing it from their practice; but the argument was inforced, by the gain of their ſecurity from the *Rapes*, *Hatchets*, and *Tributes* of the *Romans*; as *Ægeſippus* writing of *Claudius*, and cited by Mr. *Camden*, affirms; *Quos* (viz. Britannos) *etas ſuperior ignorabat, didicit Romanorum victoria; ſerviunt & ipſi, qui quid eſſet ſervitus, ignorabant; ſoli ſibi nati, & ſemper ſibi liberi.* Here again we ſee the ſenſe the *Britains* had of their Liberties and Laws; who notwithſtanding they were bridled by ſeverall *Garriſons* and *Colonies* of the *Roman Souldiers*, yet durſt ſhew their faces in Battel, (chuſing rather Death than ſuch a Life) in the Vindication of thoſe Liberties conveyed to them from the prudence and experience of their *Anceſtors*, and continued through all thoſe times the *Romans* had intereſt here. Let us now proceed, to examine how theſe Laws and Cuſtoms fared in the next grand revolution. After ſome time that the *Romans* had bereaved *Britain* of thoſe of her youth, that had been trained up in Military diſcipline, which ſhould have been the ſtrength of her Walls, and force of her Fortreſſes; and had by reaſon of thoſe great and dangerous Diverſions into other Lands, left this Iſland naked, and ſo conſequently to ſhift for it ſelf; there was ſome time paſſed in Confuſions, rather than in Government; in Uſurpations, rather than Settlements; ſome one or other here inveſting themſelves with an Imperial Robe, till at laſt by theſe troubleſome means the Government hereof returned into a *Monarchy*, though through many ſad

and dangerous Convulsions, as we may gather out of the Lamentations of *Gildas*. But on the Person of *Vortiger* devolv'd at last we find it, in whose Reign the *Picts*, like an impetuous inundation, break in upon the *Northern parts*: and notwithstanding that wonderfull relique of the indefatigable labour and cost of the *Romans*, in that *Wall* which reached from *Sea* to *Sea*, yet through it they passed, Destroying and Impoverishing all: The *Britains* unable to confront them, having lost their Souldiery; and the rest of them so effeminated, that they durst not try their power against them; and having ineffectually hazarded and given up their Lives, and long in vain implored help and assistance from *Ætius* the *Consul*, (as he is termed by our Writers;) who was a *Roman General* in *Africk*, together with one *Bonifacius*, of both which * *Procopius* writes; that they were *Valiant and expert Souldiers, inferiour to none of their time; being men so high in Worth and Spirit, that he shall not err, that calls them the last of the Romans*: when the *Britains* petitioned his assistance, it was at that time (I believe) that by the means of the *Empress Placidia*, he was revoked from his *Command* in *Africk*: but from him they gained nothing; so that at the last, *Vortiger* engages to their aid certain * *Saxons*, who had enured themselves to *Pyracies*, and were Rovers at *Sea*, under the Com-

Circa Ann. Salutis humanæ 443.

* *Hist. Bel. Vand.* l. 1. c. 4.

* This Mr. *Selden* hath also Collected by his Observations; Tantundum (saith he) sanè innuere visus est antiquus scriptor *Ethelwerdus*, de eorum adventu verba faciens; *Illis diebus*, inquit, *agilem audierunt* Britanni *esse in Piratico genere Gentem Saxonum in tota* Maritima à Rheno *fluvio usque in* Doniam *urbem*, quæ nunc vulgò *Danemarc* nuncupatur, *ac in omni armatura robustam; His igitur immensa per nuncios munera mittunt, auxilia petunt, societatem pacis promittunt.* Qui antea Mare *Britannicum* infestare soliti, ad ejusdem tutamen & ad pacem invitantur. Mare claus. *Lib.* 2. *c.* 9.

mand

mand of two Brethren *Hengist & Horsus*: They with nine thousand *Saxons* undertook the defence of the forementioned wall against the *Picts*; which they prosperously and successfully performed. The entertainment of these people, who had will, and by degrees power to enforce and subject them, was the first Original of those disasters that afterward befell them; but this ought not to be conceived to be done at this time with these *nine Thousand Saxons*; for certainly it was by other means: *Vortiger* then *King* of the *Britains*, although by the common opinion of Writers he is said to have bestowed upon *Hengist* the *Kingdome* of *Kent*, by way of remuneration for his services: yet cannot I credit, that, *that* circuit should be erected into a distinct *Regal* jurisdiction, by the order of *one* that seemed to be in possession of an entire *Regal authority* over the greatest part of this *Island*; nor can I digest the notion of *Hengist* his forcible usurpation of *Kent* at this present as a *Kingdome* for himself and his heirs. For the first, we must consider *Hengist* left a very considerable number of his *Saxons* to defend the wall against the *Picts*; and these must be out of his first number: and how can we then rationally imagine, that he was able to retain with him, such a considerable force, as could probably take possession of this *Kingdome*, against the wills or consents of the *proprietors*? for I much question whether all his power conjoyned (with many more) could in probability have been able to supplant so populous, and so understanding a people as *Cæsar* reports.

* *Susceperunt ergò qui* (viz. Saxons) *advenerant, donantibus Britannis, locum habitationis* INTER EOS, *ea conditione, ut hi militarent &c.* Bed: Eccl. hist. l. 1. c. 15. They had Lands assigned to them *among them*; not the Lands and Possessions of the *Britains* assigned.

reports them to be; or that in any likelihood those inhabitants, upon a contract or gift of *Vortigers* to *Hengist*, would have so tamely submitted themselves to an everlasting exilement from their ancient seats and places of nativity, or so easily have suffered the loss of them. I very well understand that it may be strongly objected against me: that these 9000 *Saxons* being able to effect that which the *Britains* could not, would be able in probability to master this one *County*: but in answer thereunto, many particulars are to be considered, First, that the *Saxons* were not near that number they first brought in, (as I said before) by taking notice of a proportionable force probably left to guard *the wall*; reflecting upon the quantity *that wall* would necessarily require for its defence. These *Pictish* Invasions were done at such time, when the * *Britains* (as *Gildas* reports them) were in intestine feuds among themselves; by which it so fell out, that they did not go joyntly to assist one another against this common Enemy; but by those Quarrels left those neareſt to the confines, unto their mercileſs cruelty: and we find that when the *Saxons* observed not their Articles afterwards, then the *Britains* united; (though too late): and were so united, before that any *Saxon* recruites were landed in *Britain*. And those families under the provocation of expulsion, probably, would have freely ventured their lives, rather than be exposed to penury and famine (which are worse than death) in vindication of their estates & livelihoods; and what could the *Saxon* opposition do, when in all probability they

* *Bede* reports, *lib.* 1. *c.* 13, 14. of his Ecclesiastical History, that the *Britains* were very sorely afflicted with a Famine, and enjoying suddenly a great plenty, fell to Luxury and sloath, and were so effeminated.

they were enforced to ſeparate to take poſſeſſion of thoſe Lands? and if they in their ſeparation had enjoyed peace and quietneſs; what can be imagined, ſuch a ſmall number ſhould have done, with ſo great a Tract of Land as that is? Certainly they were not able to manure and cultivate it. Again, if the *Britains* had been expuls'd, what became of them? or where were they replanted? this would have received as great a * Note in Hiſtory as the Planting afterwards of the *Britains* in *Armorica*: but that which would cauſe me moſt to wonder, is, that in the midſt of ſo many revolutions, changes and the hard fortune that befell *Vortiger*, *Hengiſt* ſhould be able to have waded through the many difficulties neceſſarily attending him, for the ſpace of three and thirty years, by the influence only (as our Hiſtorians would have it) his Daughter *Rowena* had upon *Vortiger*. But to find out the probability of that which hath cauſed all this noiſe (not that I am ignorant, but that afterwards the *Saxons* did reach and graſp the Government of this Iſland; and did get themſelves into a full power thereof; but what I diſcourſe of is of that Tract of time in the Reign of King *Vortiger*) here we muſt underſtand that the *Romans* toward the latter times of their Government in this our *Iſle*, had in theſe parts a *Comes* or *Lieutenant*, that was denominated, *Vir ſpectabilis Littoris Saxonici*; who had in charge the defence of this Shore againſt the ſudden incurſions and depredations of the *Saxons*, who it ſeems had uſed that Trade of infeſting theſe ſhores, long before the *Romans*.

* Or at leaſt ſuch a Note as this action at this Town received from the *Saxon* Chronologiſt, Anno Chriſti 490. *Hic Ella & Ciſſa (urbeculam) Andredeſceſter obſederunt, omneſq; qui inibi habitarunt occidebant: nec, ibi exinde Britannus unicus (vivus) relictus fuit.*

mans quitted our *Island*; which when they had deserted, these were the men, that * *Vortiger* waged against the *Picts*; prudently believing (I guess it, by his wise placing of them) that his imploying and ingaging them would at one and the same time, not onely ease these Shores from their own frequent depredations; and preserve them from the inroads of others of the same Countrey and Trade; but also ingage them (who were a people enured to fights and hardships) against the *Picts*; and to this purpose he placed the one part of them upon the *Picts-wall* against his *Northern Enemies* by *Land*; the other part upon the *Kentish shores* against his *Northern Enemies* by *Sea*: (the best designment that ever was or can be cannot ensure success to it;) but what than this could be more prudent? and more for the benefit and security of his Subjects? And although *Vortiger* pass among all writers under the severe censure of high Infamy, yet may there be much collected in his behalf, out of those clouded notions in History: whether it was his permitting so great numbers of *Saxons* to enter his *Kingdome*, or his own personal vices, that made him so distastefull to his Subjects, I will not take upon me positively to resolve; sure I am, I find him expuls'd his Throne; and yet with much desire and applause restored; and in my conceit, the restauration of him doth more argue for him, than any thing I ever met with could against him. It is not usual with a people after they have rejected and divested a *Prince*, and set up another in his place, to return and reinvest the

* *Initum namq; est concilium, quid agendum, ubi quærendum esset præsidium ad evitandas vel repellendas tam feras, tamque crebrimas gentium aquilonarium irruptiones: placuitque omnibus cum suo Rege* Vortigerno, *ut* Saxonum *gentem de transmarinis partibus in auxilium vocarent, &c.* Hist. Eccl. Bed. l. 1. cap. 14.

the old one; unleſs ſome viſible worth were eminent in him. But whatever the reaſons were; this I obſerve, that in the way of management of the Government of his *Kingdome*, he traced the ſame path of Prudence chalked out to him by the *Romans*. For Mr. *Lambert* out of *William of Malmſbury* reports, that in the time of this *King*, there was one *Guorongus vice-Roy* or *Leiutenant* of *Kent*, and Mr. *Cambden* gives us an account thereof (worthy of much note) *Vortigernus Guorongum Cantio præfecit* (i. e.) *pro-regem ſive libertum, quo neſciente* (obſerve this) *hanc regionem* (*ut habent* Ninnius *&* Malmesb.) *ſtatim Hengiſto Saxoni in gratiam Rowenæ, ejus filiæ, quam miſerè deperibat, gratis conceſſit.* I cannot fancy *Rowena* to be the price of *Kent*; nor that the Land of that Country was beſtowed upon *Hengiſt*; but the gift or conceſſion was of ſo much only as *Guorongus* did lately poſſeſs, which was the *Leiutenantſhip* thereof; and ſeems to be no other than thoſe *Regal powers*, which were formerly granted by the *Romans* to the *Honour* of the *Comites*, of which Mr. *Campden* gives ſeveral accounts; for in one place he finds them denominated *Comites litoris Saxonici per Britanniam*, and in another place *Viri ſpectabiles*; and tells us that in Maritine Affairs they were ſo well skill'd (writing of the *Saxons Pyracies*) that; *ad eorum deprædationes coercendas* * *Comites litoris Saxonici per Britanniam & Galliam conſtituti fuerant*: for the *Saxons* (I ſay) had long be-

* *Selden. Mare clauſ. in initio ſeculi: in fine.*

Mr. *Selden* hath diligently obſerved this. *In libris Natitiæ* (ſaith he) *ita legitur, Sub diſpoſitione viri illuſtris Magiſtri peditum præſentalis Comites militum infraſcriptorum.*

Italiæ.
Africæ.
Tingitaniæ.
Tractus Argentoratenſis.
Britannicarum.
Litoris Saxonici per Britannias.

Tam in Alciati quàm Panciroli editione legitur, ut hoc, Militum infraſcriptorum.

Dubitari nequit, quin pro Militum, limitum *fuerit ſubſtituendum. Neque enim ratio officiorum Imperialium patitur ut* Militum *ibi locum habeat. Et certiſſimum eſt ex iis quæ ſequuntur, Italiam, Africam, Tractum Argentoratenſem, Britannias, & litus Saxonicum ſuos habuiſſe Comites, ut Comites Limitum, non aliter ac Territoria quæ ibi proximè ſubjunguntur, velut Mauritania Cæſarienſis, Tripolitani, aliæ itidem provinciæ, quæ præter Britannias, ſuos pariter habuere Duces, nomine Ducum limitum, &c.*

fore *Vortigers* Reign infested the *British* shores. But how *Hengist* and his *Saxons* did answer their trust, I need not tell you, for it is plain they took an *ell* where but an *inch* was given; and out of this *Hide* did cut to themselves large *Thongs*. It * was an antient Custome among the *Britains*, and after them of the *Saxons*, to give the *Title* of *Reguli* to all *Lords* that had the Charge and Custody of * *Marches* and *Limits*: the *names*

* The Soveraign Power hath alwaies had, and used the privilege of making Kings under them as it pleased them, as Mr. *Selden* observes, *Mare clauſ.* l. 2. c. 19. *Nec contemnendum eſt* (saith he) *ſunt id, quod in chronicis Cœnobii* Theokesburienſis *occurit de* Henrico *de* Bello campo, *Duce* Warwici, *in dignitatem Regis, ab* Henrico *Rege Sexto, non ſolum Inſulæ* Vectis, *verum & Sarniæ & Cæſareæ, ad quas cæteræ in hoc tractu civiliter ſpectant, creato. De Inſula* Vecti *idem memorat vir optimus* Gulielmus Camdenus, *idq; ex eodem codice. At vero codex ipſe ad hunc modum; Obiit autem Dominus* Henricus *Nobilis Dux* Warwichiæ *& primus Comes* Angliæ, *Dominus le* Diſpenſer *& de* Abergevenny, *Rex de Inſulis* Wight *&* Gardſey *&* Jardſey, *Dominus quoq; Caſtri* Briſtoliæ *cum ſuis annexis. 3. idus* Junii A. D. 1446. *Anno ætatis ſuæ* 22. *apud caſtrum de* Hanleya, *& ſepultus eſt in medio chori* Theokesburiæ; *& paulo ante, de Eodem; Coronatus eſt in Regem de* Wight *manu Regia; & paulo poſt; Quemadmodum* Richardus *Rex ſecundus cum* Robertum *comitem* Oxoniæ (*qui & Marchio* Dubliniæ *& Dux* Hiberniæ *fuit*) *Regem* Hiberniæ *creare deſtinarat, ſe interea Inſulam illam non minore quam Regis (tametſi Domini nomen tunc, uti etiam uſq; ad* Henrici *Octavi tempora poſteriora, Regis ibi vicem omnino ſupplereret) titulo ac dignitate poſſidere proculdubio non dubitavit.* By which Custome brought down so near our age, and deduced from the practice of antient times, it is no wonder that we find so many in several ages dignified with that Title, either as an especial mark of Honour, or by the privilege of descent, as the Earls of *Derby* at this present are with the Title of Kings in *Man*.

* From this it was that in the time of *Rich.* 2. came up first the Title of *Marqueſſes*, which is a Governour of the *Marches*; for before time those that governed the *Marches* were called commonly *Lord Marchers*, and not *Marqueſſes*, as *Judge Dodaridge* hath observed in his *Law of Nobility and Peerage*, under the Title of *Marqueſſes*, pag 31. where in that Chapter he also adds this Paragraph well worth the reading. After the *Normans* had conquered this Land, it was carefully observed by them, as a matter of much moment, and a point of special Policy, to place upon the confines and borders of the *Britains* or *Welsh*, &c. not then subdued, men of much valour, not only sufficiently able to incounter the inrodes and invasions of the enemy; but also willing to make on-set of them, and inlarge the Conquest; These men thus placed, were of high blood, credit, and countenance among

among their Countrey-men the *Normans*, and in whose faith and power the Conquerour reposed special confidence and trust, and therefore in their Territories given unto them to hold their Tenures, were devised to be very special, and of great Importance, and their Honours inriched with the Name and privileges of Earls of *Chester*, and for the North-border of *Wales* created to be a County *Palatine*, and the Barons of the middle Port of the *South* Marches, were adorned in a manner with a *Palatine* Jurisdiction, having a Court of Chancery, and Writs onely among themselves pleadable, to the intent that their Attendance might not thence be driven for the Prosecution of Controversies, and Quarrels in the Law; and as for the other part of the *South* Marches, they seemed sufficiently fenced with the River of *Severn* and the Sea. My business hath been to make it probable that these *Reguli* were Lords of Marches and Limits long before the *Norman* conquest, to which I referr you; neither were those *Welsh* limits fenced by *Severn*; but for many hundreds of years, by *Offa* his ditch.

of many Honoured with that Title I can shew: especially such as were *Custodes* or *Keepers* of that Famous Limit betwixt the *Mercians* and *Britains*, set out by that Renowned *ditch* which *Offa* the *King* of *Mercia* drew; a Memorial of some of them out of an antient * *M S. Chronicle* that I have, I shall exhibit, wherein such persons were not onely called *Reguli*, but also *Reges*. *Penda* (saith this *Anonymous Author*) did spread his *Kingdome* of *Mercia* very farr, about the year of *Christ* 620. for he slew in Battel two *Kings* of *Northumberland*, Saint *Edwin*, and Saint *Oswald*; and three *Kings* of the *Eastangles*, *Egric*, S^t. *Sigebert*, & *Anna*. The said *Penda* had by his *Queen Kineswith* five Sons, *Wolfer*, Saint *Ethelred*, Saint *Merewald*, Saint *Mercelin*, and one other, (This without a Name in this place was his Eldest Son *Peada*) and two Daughters, Saint *Kynesburg*, and *Kyneswith*; he Reigned 30 years. *Wulpher* was the first King of the *Mercians* that received the Faith of *Christ*, and he married S^t. *Ermenild* the Daughter of *Ercombert* *King* of *Kent*, by his *Queen* S^t. *Sexburge*: *Germanus vero ipsius* Westanheconorum *Rex Sanctus* Merewoldus: married S^t. *Ermenburg* the Daughter of

* *Hist. M S. penes Author.*

Ermenred the *King*, Brother of the ſaid *Ercombert*, and by her had three Daughters, all of them Saints, two of their Names were *Milburg* and *Mildrith*, and one Son S^t. *Merimnus*, who being dead, his Uncle S^t. *Mercelin* did Reign in his ſtead. Here be ſeveral Kings whoſe Names you will hardly find in the Chronicles. But * *Leland* in his Itinerary reports out of ſome Books in his time found in Religious houſes, that this *Merewaldus*, whom he calls *King* of the *Marches*, built a *Monaſtery* for *Nunns* at *Lempſter* (which in the Britiſh is called **Llan-Llieni**, **Llelan** ſignifying *virgo Veſtalis*, *Sanctimonalis*) in *Engliſh*, the *Church* of *Nunns*, and *endowed it with all the Land thereabout*, *ſaving onely the Lordſhip now cauled* Kingeſland; after theſe ſucceſſions in this ſmall Kingdom, I find one *Ethelmund* was alſo *King* of the *Weſtanhecom*, who were the *Inhabitants* of the *North-weſt parts of Herefordſhire*; certain to be ſo not only by the places mentioned in that Tract of Land, but for that I find one *Wilhard* (who by *Biſhop Godwin* is doubtleſly miſtaken to be put as Succeſſor to *Utellus*, but ſhould have his place betwixt *Podda* and *Ecca Biſhops* of *Hereford*) in his ſigning to the Charter granted to the Abbey of *winchelcomb*, Anno Dom. 811. writes himſelf thus, ✠ *Ego* Wulfhardus *Hecana* (*Quæ nunc* Herefordienſis *dicitur*) *Epiſcopus conſenſi & ſubſcripſi*. And *Math. of weſtminſter* writes that he was *Biſhop of Hereford* in the year of our Lord 765. at that time when *Offa King* of *Mercia* procured of *Pope Adrian* an *Archbiſhops Seat* at *Lichfield*. Many other *Reguli* were in theſe *Marches*, for they did conſiſt of ſeveral frontier Juriſdictions: I have found ſome very antient, as of *Pibanus King* of **Ergin** (now *Urchinfeld*) the *Grandfather*

* *M S. vol. 4. in Biblioth. Bodl.*

Monaſt. Angl. pag. 127.

Grandfather of S^t. *Dubritius* the *Archbishop* of *Caerleon* in the *Reign* of *King Arthur*: of one *Gorvodius King* of the same place after him. But I cannot let pass that which I found in a *Record transcribed into* a *Register book* of one of the *Bishops* of *Hereford*, certifyed as I guess from *Innocent* the third, concerning a donation to the *Church* of *Hereford*; wherein the *Donor* is termed *Regulus* (his name at present I do not remember, but refer it to another place) he is said (to fortifie his gift to the Church) in it; to be *in plena Regia potestate*. *Milfrith*, the principal *Benefactor*, if not *Founder* of the *Minster* at *Hereford*, is denominated sometimes *Regulus*, sometimes *Rex*. *Four Reguli* in *Kent* at one and the same time witnessing to a *Charter* of one of the *Kings* thereof. In the time of *Julius Cæsar*, *Quatuor erant Reguli qui Cantio præerant, Cingetorix, Carvilius, Taximagulus, & Segovax*; upon which M^r. *Campden* makes a jest, saying of *Cæsar*; *quos ille ut Reges devicisse videatur, Reges vocat, cum tamen Reguli fuerint, vel melioris notæ nobiles*. Hence I collect, that these *Reguli* were a constitution, at least a Custome anciently among the *Britains*; that *Guorongod* was a *Regulus* of *Kent*; and that *Vortiger* did probably bestow no more upon *Hengist* than the said Honour or Command of, (or rather in,) *Kent*; whether it was under the *Title* of *King*, *Count*, *Regulus*, or *Lieutenant*, it doth not much matter; for the *Breaches* which the *Saxons* afterwards made upon the *Britains* were such, as gave them liberty to take to themselves what Titles, and what of other mens Titles, it pleased them. *Hengist* had this *Dominion* or *Province* not by Conquest or force, but assigned unto him, by way of remuneration from *King Vortiger*, for

Cambd. in Brit.

his

his good service against the *Picts*; or else to preserve and engage him to, and in his service; and having no more than the like Authority as *Guorongus* immediately before possessed, he could not have any colour or Power by that gift to drive out the *Britains* from their Possessions; or so much as infringe their Customes; such an Act would much mis-become the interest of *Vortiger* to suffer, or consent that his people should be delivered up to the spoyl and slavery of the *Saxons*; his very restauration (I before spake of) is a strong argument against that opinion; for what protection could the *Britains* have expected from him, that had (supposing the Story true) joyned with strangers their Enemies, in the dispossession & destruction of his own people, and Subjects? the same Improbability do I impose upon the alteration of Customes; I might aske *ad quem finem*? to what end should he alter their Laws and Customs? we must look upon *Hengist* as an *Exile* out of his own Countrey; who me-thinks could not but be contented, to find himself and his, setled in a way of livelihood in honour and plenty; rather than venture to put all to Hazard by needless contests: so that I believe *Hengist* found this custome in dispute among others used by the antient *Britains*, and intermedled not therewith; and this especially, for that I look upon it as a true and genuine *Stemm* of the Customes and Usages of the *Original Planters*, remaining here unaltered, through these two grand revolutions of *Roman and Saxon Power*. But a little more to cleer it; let us consider the State and Condition of this *Nation*, in their turmoyles with the *Saxons*; and examine whether the *Britains* were totally extirpated from such

places

places in other parts of this Nation, where they did spread their conquering Armes; I think by comparing the sense of Histories together, it will appear probable, that where the *Saxons* are reported to have constrained the *Britains* into the *Angles* of this *Island*, the *Optimates* and *military men* were *they* (for the most part) that were so forced, when as the *Agricolæ* and *Villani* never moved, but as well as they could, and according to opportunities, made the best conditions they could for themselves with the Conquering *Saxons*. So I find in the * *Cities* of *Excester* and *Hereford* that the *Saxons* there first placed in Garrison, were onely the Soulders, who permitted the *Britains* in quietness to live among them; and so probably, retaining their Lands, to follow their Tillage and Trades, till an ensuing Peace inclined all to settlement; for otherwise it had not been possible for so many *Saxon* Armies as were necessarily to be employed at one and the same time throughout this Island, for the erecting of seven *Kingdomes*, under seven several *Generals* or *Kings*, to have subsisted; had the Countrey *Britains*, I say, deserted their Ploughs and dwellings, and desisted from their Agriculture; neither could so many Villages be so well replenished by the *Saxons* only, in so short a time, had not the *Britains* made their abode, and stay in them, as we may plainly perceive they were, by those antient donations of several of the first *Heptarchical Kings*; in which are recited oftentimes the *British*

* In the little History published by Mr. *Wheelock* found with the *Saxon M S.* of *Bede*, writing of the setling of the Kingdome of the West *Saxons*, it is thus Recorded, that *Cerdic* and *Cinric* his Son, six years after they Landed in *Britain*, Invaded that Province, ⁊ ꝑæꝓon ðа æꝓeꝛtan Cyningaꝛ þe ꝑeꝛt Seaxena land on ꝑealum ȝeeoðan. (i. e.) *iique erant primi Reges, qui Occidentalium* Saxonum *Regnum* INTER WALLOS *perdomuerant.*

tiſh names of the *incolæ* of ſeveral *Villages*: for the fuller underſtanding whereof, I refer the *deſirous Reader* to the moſt antient donations to *Glaſtenbury*, made publike by the Collections in *Monaſticon Anglicanum*. And I believe my affirmation grounded upon ſo much probability, that (notwithſtanding the ſetling of the *Engliſh* Speech ſo Generally) the greateſt part of the *Inhabitants* of *England* at this day, were it poſſible exactly to derive their pedegrees from thoſe elder times, would prove to be *Britains*; take alſo into this number, ſuch, that by the time the *Saxons* had made their Conqueſts here, had from the *Romans* been made *Emeriti*; having procured a writ of eaſe from the Wars, and by this time were ennaturaliz'd *Britains*: and ſeldome do we find or hear, that an invading Army did out-number the people of an invaded Countrey; neither is it probable that the *Saxons* as ſoon as they had made way, through much oppoſition, to attain their deſires, would turn Husbandmen and Graſiers; conſidering the *Britains* never ſurceaſed their claimes, nor were weary of infeſting them, pertinaciouſly endeavouring to re-gain their loſſes. I rather believe they got themſelves into poſſeſſion of thoſe Villages and Towns, that they had thus wreſted from the *Britains*, and ſuch of them as had not Spirits by Armes to defend their Country againſt them, they kept, to be Inſtruments of attaining their ends in relation to thoſe neceſſary ingredients of War, *viz.* Money and Victuals: And the multitude of words and thoſe of great ſignificancy which the *Saxons* borrowed of the *Britains*, do as ſo many arguments confirm my thoughts in this point. There was not probably a continuation of the *Britiſh denomination* of *Officers* and

Offices,

Offices, without the acceptation of the *British prudence* in founding of them; from them it is that to this day the Chief *Magistrate* of a *City* is called Meyr; not derived from *Major*, *Greater*; but from the *British* word Miret, which is, *custodire*, to keep and preserve; So *Edlin* which Mr. *Somners* expounds to signifie *Nobilis*, *splendidus*, *inclytus*; a word found also in the *High* and *Low Dutch* very familiarly, yet *Docter Davies* tells us whence they borrowed it, and that it is derived from Ed and Llin, which signifies *hæres*, or *linea Regis*; and till I occasionally met with it in his laborious *Dictionary*, I confess my self to have been much troubled, to have found it in the Laws of *Howel-Dha*; where it may as well signifie all the *Kings Children*, as one; though even among the *Welsh* some Honourable mark was afforded to the *Eldest*, above the rest: perhaps as it is found in the *German*, it may be a relique of the old *Gallick Language*. I could tyre the Reader by citing numbers of the like; but by these and the like, it seems to me, that the *Saxons* co-inhabiting with the *Britains*, did by that means graft a mongrel Speech, entertaining much of a mixture, participating both of the one and the other, *British* and *Saxon*; which the *Saxons* first received, by observation of a conveniency, or at least of finding nothing repugnant to reason in their Customes and usages; for when they first came over, they were *Barbarous*, whereas they found the *Britains civil*; they were *Heathens*, the *Britains* (mostly) *Christians*; So that the *Saxons*, either out of a desire of quiet, or else upon good liking and approbation, did yield to the reception of most of those * Laws, they found the *British* possessed of; and those the *Saxon Proceres*

Bright, from the *British* word Brith which signifies their *Waddecolour* which was a *light-blew*. *Minsh*.

* *Similiter olim apud Britones temporibus Ro-*

manorum in regno isto Britanniæ vocabantur Senatores, qui postea temporibus Saxonum vocabantur Aldermanni, non propter ætatem, sed propter sapientiam & dignitatem, &c. In leg. 35. Edovardi confessoris.

or *Optimates* did confirm; as by the comparing of the *Saxon* and the *British* Laws together, I can affirm; yet adding some terms of their own, to cause them to carry a Signification also to their understandings, as well as to the *propriety* of the *British*; from this reason it is, that we find most of our antient Law terms to be *British*, and not (as they are mistaken) to be *Saxon*, as *Murder*, *Bastard*, &c. In *Denominations* of *places*, they intermixed the two Languages; *Winfreton* (a Village in the County of *Hereford*) participates of **Winfre**, which out of the *British* turned into *Latin*, is, *Fluxus Vagæ*, (*Vaga* is the Latin name of the River *Wye*,) and *Ton*, which is purely *Saxon*, being an addition of theirs, hath no affinity with the *British*; so it is in *Wintreton*, or *Winterton*, which is compounded of the *British* **Wen-tre**, (i. e.) *Villa alba*, with the addition of the *Saxon ton*, which is one and the same in signification with the *British* **Tre**; so in *Winton*, the ordinary used name for *Winchester*, from the *British* **Venta**; and by the *Romans* had the addition of *Belgarum*, to distinguish it from many other *Venta's*, *Ton* being only the *Saxon* affix to *Venta* or **Went**. These are enough to confirm what I have already said in relation to their probability of co-inhabitation; which being of so great a valew to find proved in relation to our matter in hand, I shall notwithstanding proceed to prove it further by some Authentick records, which have relation thereunto; this may be plainly gathered from the *Laws* and *Constitutions* of the *Elder Saxon Kings*; for *Inas* in his two and twentieth *Law* hath this expression; *Wallus censum pendens annuum, &c.* and again,

gain, *Wallus virgarum metum duodecim solidis redimito*; and *Wallus quinque terræ hidas possidens*, 600. *solid. æstimandus est*; this *Inas* was *King* of the *West-Saxons*; and had, as it plainly appears by these Laws, *Britains* dwelling with his *Saxons*. I purposely pretermit the 35th. Law of the said *King*, and the 32. which is only, *de Regis equisone Wallo*, and was a concernment only of the *King*'s Posts or Messengers; but there is in the 73d. Law of the same *King*, not only a difference of *Nations*, (as in others) but also of Estates and Conditions; for there it is that a note is made of *Wallus servilis conditionis*, which supposeth there were other *Walli*, that were of a more free condition; as in the Title of that Law it is manifest, where it is, Be ðon ðe ðeop pealh þrigne man ofrlea, of a *servile Welch-man* that Kills a *Free-man*; though in the Body of that Law this *Free-man* is called an *English-man*; and in the Title of the 31. Law is this note, Be ciplircep monep land hæbene, which by Mr. *Lambard* is thus rendered, *De pagano fundum possidente*, and the Law doth thus begin, *Wallus integram terræ hydam si possederit, esto, &c.* by which Law it seems that these *Walli* were the only *Pagani*; for that the whole Law refers to *Wallus*: but *King Edward* the *Confessour* gives us a more particular note hereof, writing what Nations might *de jure* claim privilege with the Inhabitants of *England*, and saith, *Brytones vero Armorici cum venerint, in regno isto suscipi debent, & in regno protegi, sicut probi cives. De corpore regni hujus exierunt quondam, de Sanguine Brytonum* regni hujus, *&c. Ita constituit Optimus Ina Rex Anglorum, qui electus fuit in Regem per Angelum, & qui primo obtinuit*

Monarchiam totius regni hujus post adventum Anglorum in Britanniam; primus enim fuit Rex coronatus Anglorum (observe this) & Brytonum simul manentium in Brytannia, *post adventum Saxonum Germaniæ, scilicet post acceptam fidem à Beato Gregorio per Sanctum Augustinum, &c. Et universi Angli qui tunc temporis exiterunt, uxores suas ceperunt de Brytonum genere, & Brytones uxores suas de illustri sanguine & genere Anglorum, hoc est de genere Saxonum. Hoc enim factum fuit per commune consilium & assensum omnium Episcoporum & Principum, Procerum, Comitum, & omnium sapientum seniorum & populorum totius regni & per præceptum Regis Inæ prædicti, &c. Et tali modo effecti fuerunt Gens una & populus unus per universum Regnum Brytanniæ miseratione divina, &c. Universi prædicti semper postea pro communi utilitate coronæ regni insimul & in unum viriliter contra Danos & Norwegienses semper steterunt, & atrocissimè unanimi voluntate contra inimicos pugnaverunt, & bella atrocissima in regno gesserunt*; by which it is plain, there was a most antient accord, and an equal respect to the *Brytains* as well as to the *Saxons*. So may we see in the Laws of King *Æthelstan*, where it is provided, that, *Si Wallus in eas opes creverit, ut familiam alat, fundum possideat, annuumque Regi Censum pendat*, 220. *solidis valeto; atque si dimidiatam tantummodo terræ hydam possederit*, 80. *solidis æstimator: Quia si terram prorsus nullam habuerit, capitis tamen æstimatio* (ac bip ꝼꝼeoh, *siquidem is fuerit ingenuus*, if he be a Freeman) 70. *Solidorum esto*. By this we collect the *Britains* were not expuls'd; that they did co-inhabit with the *Saxons*, and maintain'd a right in their possessions; which in like manner I hope to find they did in their

Laws

Laws and Customs. I shall make use in the first place of what * Mr. *Speed* delivers out of *William* of *Malmesbury*, *William Thorn*, and the *Register* of *Canterbury*, (and hath relation to the *Kingdome* of *Kent*) concerning *Ethelbert* the *fourth King* after *Hengist*, of whom he useth these words; *This Noble King having a care for them that should come after, brought the Laws of his Country, into their own Mother tongue*: Observe here, that by this time (from the *Saxons* first arrival) it is probable the *Kentish* spake the *Saxon tongue*; their *Language* before was *British*, with the rest of the *Island*; the Country of *King Ethelbert* was *Kent*, and his Mother tongue was *Saxon*; now *Ethelbert* finding the *Laws* of his Country *British*, the *Saxon* tongue generally spoke, brought those Laws out of *British* into *Saxon*; and this is the naked meaning of it. I find * reference in several places of the *Saxons* Laws, to an *Older* Book of Laws, as if these were but only Excerptions out of it; as in the *fifth Law* of *King* Æthelstan, *de irruptione in Templum*, it is said, *Triplicis Ordalii sententia convincatur, is prout in Libro habetur judiciali compensato*; and this in the *Saxon* is called *Domboc*, (not of the same nature as the *Domesday* we have in the *Exchequer*, of which sort Writers do also mention a former, both of them being only *Surveys*, or *Descriptions* of *Lands*;) but a Book of *Judgement*, for so doth *Doom* signifie in the *Saxon tongue*. The like I find in the fifth Law of King

* Speed, l. 7. c. 18.

* Bedas Eccl. Hist. l. 2. cap. 5. ait Ethelbertum Cantiæ Regem scripsisse idiomate Saxonico, libellum cui nomen indidit DECRETA JUDICIORUM, atque judicia illa vel sua memoria tradit fuisse observata; Aluredus in præfatione legum fatetur se ex Ethelberto sumpsisse nonnulla. Quid plura? Asserius Menevensis olim Aluredo Regi familiaris, prodit ipsum Regem Saxonicis mandasse literis JUDICIORUM DECRETA, verum ad nos non pervenire injuria temporum; this out of the Glossary to the Saxon Laws, under this word LIBER JUDICIALIS.

King *Edgar*, where it is provided, that he that doth not observe the *Lord's Day*, (Junnan Dæger,) *pœnas in Judiciali libro descriptas pendito*; so likewise in the eighth of *King Edovards* Laws, *Si quis, &c. is etiam id compensationis quod in Libro judiciali continetur, præstato*; * which Book I suppose contained their antient Laws, translated out of the *British*, though perhaps since the receiving of *Christianity*, intermingled with much of the *Mosaical-Judicial-Laws*; introduced both by the *Brytains* and the *Zealous-Primitive-Christian-Saxon Kings*; to which Laws, (and perhaps may be the effect thereof) *Eleutherius* the *Pope* or *Bishop of Rome* counselled and referred *Lucius* the *Brytain* long time afore this Age we are now writing of. I am not ignorant that they had diversities of Laws, (as they are improperly called) viz. *Merchenlæge*, *Westsaxonlæge*, and *Danelæge*, which not at all relate to a different *Law*, *Kind*, *Custom* or *Usage*, but to several sorts of *Amerciaments*, *Mulcts* and *Fines*, for the transgression of one and the same Law; I say this was generally so; and so is it to be understood in the *second of King Alured's Laws*, in the case of such as *violate Sanctuary*; and is this, *Mulcta, vel ipsa capitis æstimatione, prout ejus gentis feret consuetudo, &c.* This difference of Fines and Pecuniary impositions I find frequently, but very little besides; which is also all the impression that I can perceive the rude *Danes* made upon the *English* in relation to their Laws; for during their times, *Edward the Confessour* looks not at all upon the Laws as altered, but saith, they were asleep for above three-score

* *Leges Molmutii Dunwallonis Gildas Cambrius in Latinum sermonem transtulit, & Alphredus Magnus in Saxonicum.* Balæus in vita ejusdem Molmutii.

ſcore years; as in a Diſcourſe concerning them he hath it: and magnifies them ſo highly, that in his Reſtoration of them, he would have them thought to be very Antient, though he reports them made by his *Frand-father* * *Edgar*, by which he labours to put a repute upon them; for *Edgar* was a Wiſe and Prudent Prince, and did urgently preſs the Execution of them; ſo that King *Edward* aſcribes them unto him, as theſe very Laws after the *Norman* Conqueſt were called the Laws of *Holy King Edward*; and are the ſame that the *Saxon Kings* before *Edgar*, did uſe: notwithſtanding all which, when he comes to the *Corroboration* of the *Privileges and Immunities* of the *Antient City* of *London*, as to their *Huſtings* and other *Courts*, he declares the *Antiquity* of them to be far greater than the Reign of *King Edgar*; and (I believe) are co-etanious with the antient *Britiſh* Laws; (if we ſhould grant and allow the ſame Antiquity to *Towns* and *Cities*, with the firſt planting of the Iſle) he ſaith, *Debet etiam in London quæ eſt caput Regni & Legum, ſemper curia Domini Regis ſingulis ſeptimanis die Lunæ Huſtingis ſedere & teneri. Fundata enim erat olim & ædificata ad inſtar & ad modum & in memoriam veteris Magnæ Trojæ; & uſque in hodiernum diem leges & jura & dignitates, libertates, regiaſque conſuetudines antiquæ magnæ Trojæ in ſe continet, ------ & conſuetudines ſuas una ſemper inviolabilitate conſervat.* Here I ſhall obſerve, that as well as *London* enjoyed her Privileges

* *Omnes proceres regni, & milites & liberi homines univerſi totius regni Britanniæ facere debent in pleno* Folcmote *fidelitatem domino Regi coram Epiſcopis regni. Hanc legem invenit Arthurus, qui quondam fuit inclytiſſimus Rex Brytonum, & ita conſolidavit & confœderavit regnum Britanniæ univerſum ſemper in unum. Hujus legis authoritate expulit Arthurus prædictus Saracenos & inimicos à Regno, lex enim iſta diu ſopita fuit & ſepulta, donec Edgarus Rex Anglorum illam excitavit, &c.* In leg. 35. Edovardi Confeſſoris.

vileges and Immunities, not at all infringed, from so great Antiquity, notwithstanding the several revolutions under the *Dominions* of the *Romans*, *Saxons*, and *Danes*; other places of the same Island might also probably enjoy the same favour, and hold their *Customs*, *Laws*, and *Tenures* from as great *Antiquity*; but I have done with this revolution; let us now enquire what probability we have to believe that

CHAP. IV.

William *the Conquerour altered not, but confirmed, the* Saxon *Laws. The antiquity and different use of Juries.* English *claim and recover their Lands by Law against the* Normans. *Of our common Laws, our Customs, Forfeitures, Sealing, Coverfeu, Exchequer, Fashions, Language, Writing, manner of Fights, Fortifications and Buildings.*

HAving passed through these mists and clouds of Elder Times, let us now come to see what loss or alteration, in relation to our Laws and Customs, we received by the * *Norman Conquest*, concerning which also, we have so great a plenty of Writers, that they almost extinguish the Truth with their Comments and Conceits; all the alterations imaginable are father'd upon this revolution, and summ'd up by *Mr. Samuel Daniel* in these words: *I come*

* The Denominations here of *William* the first by Conquestor or Conquerour, and this the *Norman* Conquest, have stumbled many, looking upon it as if it carried with it, the enslaving of the *English* by his Victorious success over *Harold*, and so are loath to afford it any Courteous reception; whereas there is no more in it than the plain acquisition or getting of this Realm of *England* after his pre-

to

to write of a time, (meaning this *Norman* affair) *wherein the State of* England *received an alteration of Laws, Customs, Fashions, manner of Living, Language, Writing, with new forms of Fights, Fortifications, Buildings, and generally an innovation in most things but Religion.* I make choice of this *Paragraph* of so *Elegant* an *Author* (as *Mr. Daniel*, who hath deserved very well from the *Common-wealth* of *Learning*, for his ingenuous Observations) to examine the particulars of this great mutation, so generally imagined; which enumeration will also afford us the method of our Discourse, concerning that which hapned to the *English* at that time: and first of all, concerning the *Alteration* of our *Laws*, which is the principal matter of our enquiry; of which, among many *Mr. Camden* himself hath thus written; *Victor Gulielmus in victoriæ quasi Trophæum, antiquatis pro maximâ parte Anglorum legibus, Normanniæ consuetudines induxit, causasque Gallicè disceptari jussit*; Yet presently adds, *propositis igitur legibus Anglicanis; Merchenlage, Danelage, & Westsaxenlage; quasdam reprobavit, quasdam autem approbans; transmarinas Neustriæ leges quæ ad Regni pacem tuendam efficatissimæ videbantur, adjecit.* But to evince this, let us have recourse as near as we can, to the *Authors* that were of *that Age*, and seriously weigh what they deliver unto us

tences from King *Edward* the Confessour were made known, as in the following Tract appears, by the constraint and force that *Harald* put him unto, to get his Settlement by Battel with him; which word of *Conquest* is to this day familiarly used in *Scotland*, to signifie Land purchased; and Mr. *John Skene* saith upon the word, that Conquestus, *significat Lands, quhilk ony person acquiris & possessis* privato jure, vel singulari titulo, veluti donatione vel singulari aliquo contractu; *Quhilk is conform to the Civil Law*, ubi quæstus dicitur lucrum, quod ex Emptione, venditione, locatione, conductione, vel generaliter ex opera cujus descendit. l. coiri. 7. cum seq. ff. pro Socio; and further writing of Lands so purchased, concludes; *Conquestus dicitur ratione primi conquestoris, & cum transmittitur ad ejus hæredem, exuit naturam conquestus, & induit naturam hæreditatis.*

us concerning this matter. *Mr. Selden* out of the *Litchfield Chronicle*, cited also by my very much Honoured friend, and incourager, Sir *Roger Twisden*, introduceth these words: *Anno Gulielmus Regni sui Quarto apud Londonias consilio Baronum suorum fecit summoniri per universos Angliæ comitatus, omnes nobiles, sapientes, & sua lege eruditos, ut eorum leges & consuetudines audiret. Et licet idem Rex Willielmus leges Northfolkiæ & Suffolkiæ, Grantbrigiæ & Detræ (ubi quondam maxima pars Danorum & Norwegiensium inhabitabant) prius magis approbaverat, & eas per totum Regnum observari præceperat, pro eo quod omnes Antecessores ejus, & fere omnes Barones Normanniæ, Norwegenses extitissent, & quod de Norwegia olim venissent; Sed postea ad preces communitatis Anglorum, Rex adquievit, qui deprecati sunt, quatenus permitteret sibi leges proprias, & consuetudines antiquas habere, in quibus vixerant patres eorum, & ipsi in eis nati & nutriti sunt, scilicet, leges Sancti Regis Edwardi, & ex illo die magna authoritate veneratæ, & per universum Regnum corroboratæ & conservatæ sunt, præcæteris Regni legibus, leges Regis Edwardi. Unde per præceptum Regis Willielmi electi sunt de singulis totius Angliæ Comitatibus Duodecim Viri sapientiores, quibus jurejurando injunctum fuit coram Rege Willielmo, ut quoad possent, recto tramite neque ad Dexteram neque ad Sinistram declinantes, legum suarum & consuetudinum sancita patefacerent; nil prætermittentes, nil addentes, nil prævaricando mutantes. Alderedus autem Eboracensis Episcopus, & Hugo Londoniensis Episcopus per præceptum Regis, scripserunt propriis manibus, omnia quæ prædicti jurati dixerunt, &c. Ingulphus Crolandensis* also, who was *Chaplain* to this *King William*,

liam, and being himself somewhat concerned in this affair, and so the more to be believed (as an *Agent*) writes a little more plainly than the last did, thus; *Attuli* (saith he) *eadem vice mecum Lundonias in meum Monasterium leges æquissimi Regis Eadwardi, quas Dominus meus inclytus Rex Willielmus autenticas esse, & perpetuas per totum Regnum Angliæ, inviolabiliterque tenendas sub pœnis gravissimis proclamarat, & suis justiciariis commendârat eodem idiomate quo editæ sunt, ne per ignorantiam contingat nos vel vestros aliquando, in nostrum grave periculum contraire & offendere usu temerario Regium Majestatem, ac in ejus censuras rigidissimas improvidum pedem ferre, contentas sæpius in eisdem, hoc modo*; and the *Title* of those *Laws* is this; *Ces sont les leis & les Custumes que li Reis William grantut à tut le peuple de Engleterre, apres le Conquest de la Terre. Icelles meismes que le Reis Edward fun Cosin tint devant lui*; which is in *English*; these are the Laws and Customs which King *William* granted to all the people of *England*, after the Conquest of the Land; and are the same which *King Edward* his *Cousin* did hold before him: And the like account given by the *Litchfield Chronicle*, is found in the Laws of *King Edward*; which, though from him receiving the Denomination, yet probably were Transcripts of a Date (since the *Norman Conquest*) for that in them is found an express of the *Norman Settlement* of them: in which is also an account of the difference of the *Rate* of *Mulcts*, betwixt the *Saxons* and *Danes*, or *Norwegians*; and because of the near relation the *Normans* had to the *Danes*, it is said, that *King William* made choice of those Laws, and would have had them put in Execu-

tion as the Law of *England*; *Quippe cum aliarum legibus Nationum, Brytonum scilicet, Anglorum, Pictorum & Scotorum præponderasset*: he praised and liked of this *Dane-læge* best; (onely this observe (if it be worth taking notice of) that not onely the *British Laws* come into the account, but also they are set in the *first place*.) But *King Williams designment* had this Effect and Issue, for taking that resolution, it is said: *Quo audito, mox universi compatriotæ regni qui leges edixerant, tristes effecti, unanimiter deprecati sunt, quatenus permitteret sibi leges proprias & consuetudines antiquas habere in quibus vixerunt patres eorum, & ipsi in eis nati & nutriti sunt, quia durum valde foret sibi suscipere leges ignotas, & judicari de eis quas nescirebant. Rege vero ad flectendum ingrato existente tandem eum prosecuti sunt deprecantes, quatenus per animam Regis Edwardi, qui sibi post diem suum concesserat coronam & regnum & cujus erant leges; nec aliorum extraneorum exaudiendo, concederet eis sub legibus perseverare paternis. Unde consilio habito, precatu Baronum, tandem acquievit. Thomas vero Archiepiscopus Cantuariensis & Mauritius Episcopus scripserunt propriis manibus omnia ista prædicta per præceptum prædicti Regis Wilhelmi. Ex illo igitur Die multa Autoritate veneratæ, & per universum regnum corroboratæ & observatæ sunt præ cæteris patriæ legibus leges Edwardi Regis Sancti, &c.* Though the King at this time was so unwillingly moved to the requests of the *English*; yet we find that afterwards he laboured all he could to *ingratiate himself* with *them*, as standing in fear of them. For in the third year of his Reign, *Edgar* out of *Scotland*, and the *Earls Edwin* and *Morchar*, with assistance from *Denmark*, gathered into a body in the *North*, and were there defeated

defeated; whereupon ſaith Mr. *Daniel*, the *moſt* of theſe *Lords* preſently after came in upon publick faith given them, and were conducted to *Berkhamſted* by the *Abbot Frederick*, who upon their ſubmiſſion, and oath of Allegiance re-taken, had their pardon and reſtitution to grace, granted by the *King*, believing it his own concern ſo much, to quiet them, that he again took his perſonal oath, before the *Archbiſhop Lanfranc* and the *Lords*, *To obſerve the* ANTIENT LAWS *of the Realm, eſtabliſhed by his noble predeceſſors the Kings of* England; *and eſpecially thoſe of* Edward *the Confeſſor.* Thus we plainly ſee the *Laws* that were continued and confirmed, were the old *Saxon Laws*, as we have it in this *decree* of *William the Conqueror*, *Hoc quoque Præcipio, ut omnes habeant & teneant legem Regis* Edwardi *in omnibus rebus, adauctis his quæ conſtituimus ad utilitatem Anglorum.* And his Son, *Henry* the *firſt*, took the very ſame courſe; for amongſt his decrees it is, that, *Murdra etiam retro ab illo die quo in Regem coronatus fui omnia condono, & ea quæ à modo facta fuerint juſtè emendentur ſecundùm lagam Regis* Edwardi, and preſently after he ſaith, *lagam Regis* Edwardi *vobis reddo, cum illis emendationibus quibus eam pater meus emendavit conſilio Baronum ſuorum.* But let us deſcend to particulars, and view from whence we had our *Juryes*, the great *pillar* of our *Laws*, and the *Bulwark* of our *freedomes*, (certainly upon a great miſtake, ſaid to be brought in by the *Norman Conqueror*) concerning which Mr. *Campden* writing againſt *Polydore Virgil*, (who it ſeems was of that opinion alſo) hath it thus: *Nihil à vero alienius, multis enim ante annis*

Ex legib. Guil. 1.

nis in uſu fuiſſe certiſſimum eſt; of ſo general a concernment alſo was this way of Judgment, that in the 31. *cap.* of the *Laws* of *Hen.* 1. it is decreed, *Vnuſquiſ-*

Cooke l. 2. c. 12. Sect. 234. e. For the inſtitution and right uſe of this Tryal by 12. men, and wherefore other Countreys have them not, and this Tryal excels others, See Forteſcue at large, *cap.* 25, & 29. & *Glanvil* lib. 1. *cap.* 14, 15. *Bracton* lib. 3. fol. 116. a. and in antient times they were 12. Knights. This Tryal of the *fact per duodecim liberos & legales homines* is very antient, for hear what the Law was before the Conqueſt, Lamb. *verbo centuria. In ſingulis centuriis comitia ſunto, atq; liberæ conditionis viri duodeni ætate ſuperiores una cum præpoſito ſacra tenentes juranto, &c.* Nay, the Tryal in ſome Caſes, *per mediet atem linguæ* (as we ſpeak) was as antient, in Lamb. *fol.* 91. 3. *viri duodeni jure conſulti, Angliæ Sex, Walliæ totidem, Anglis & Wallis jus dicunto*, and of antient time it was called, *Duodecim-virale judicium.*

que per pares ſuos judicandus eſt & ejuſdem Provinciæ.

This is the Judgement by our * *Peers* by which we ſtand and fall, and is our *Engliſh Peculiar*: for in *Normandy* the Civil Law is their *known* and *uſed Law*; and I believe you will hardly find that *that* Law takes any Cogniſance of *Juries* 5. whoſe numbers were not in all ages fixed or certain; but varied into ſeveral *numbers* according to what you ſhall find cited in ſeveral Reigns. They were for many *Centuries* together (as at this time) but 24. of which 12. to be preſent; and this in the *Saxon Laws* hath ſeveral appellations: But to aſcend with theſe Juries up to antiquity, we will begin with *Hen.* 1. and with what he decrees in the 66. *Chap.* of his *Laws*. *Si quis Dei reſtitudines per Vim deforciat, emendet* LAHSLIHT, *cum Dacis, plenam Wytam cum Anglis, vel ita neget, aſſumat*

* Judge *Doddridge* in his Treatiſe of Nobility, *pag.* 110. hath this, Whereas it is contained in the Great Charter amongſt other things in the form which followeth: No freeman ſhall be taken or impriſoned, or diſſeiſed of his Free hold, or his Liberties, or Free-cuſtomes, or ſhall be Outlawed or Baniſhed, or in any wiſe deſtroyed, nor go upon him but by the Lawfull Iudgment of his Peers, or by the Law of the Land; by which it is to be ſeen that it was the antient Law of the Land; for Magna Charta was only a Confirmation of thoſe antient Privileges claimed by the Barons and people from the firſt Norman Kings.

assumat undecim, & idem sit duodecimus, and so presently after concerning *Burchot, vel Brighot*, he saith, *In Denelaga, sicut stetit antea, vel ita se alleguet, nominentur ei* XIIII *& adquirat ex eis undecim. In his vero secundum legem nominati, consacramentales vicini habendi sunt, quia solus non potuit, &c.* and in Cap. LXXIV. concerning a *Thief slain*, it is said: *juret quod in cognato suo, nullum factum erat, pro quo de vitâ fortisfactus esset, & eant alii cum duodecim, & superjurent ei in munditiam, quæ ante dicetur*; so in the *Laws* of *William* the *Conqueror*, at *Numb.* 16. *Siquis alterum appellet de latrocinio, & is sit liber homo, & habeat* ——*testimonium* [a] *de legalitate, purget se per plenum Sacramentum, & alter qui infamis ante fuerat,* **per ferment nomed**, *videlicet* XIV. [a] *homines legales*, **per non** *si is habere eos poterit, purget se duodecima manu, &c.* so in the next number, against those that break a *Church*, or, a *Dwelling-house* it is said, *se purget per* XLII. [a] *legales homines* **nomes** *se duodecima manu, &c.* so it is decreed for a *pledge* of any *Thief* that is *fled* or *escaped*, *Plegius ejus habebit* IV. *menses & unum diem ad eum quærendum, & si possit eum invenire, juret se duodecima manu, &c.* but this all looks on this side the *Norman* Conquest; let us therefore pass beyond it, lest any should be so inconsiderate as to think those cited Laws were not the Laws of the *Saxons* before the *Conquest*; and in the XXXVIII. *Law of King Edward* we find this; concerning a person accused;

[a] Iudge *Dodaridge* in his Treatise of the Barons, *pag.* 155 saith, The Yeomanry or Common people for they be called of the *Saxon* word Ʒemen, which doth signifie Common, who have some Lands of their own to live upon, for a Carve of Land or Plough-Land, was in antient times of the yearly value of five Nobles, and this was the Living of a Sober man, or Yeoman. *Coles* 9. *part. fol.* 124. *b.* But in our Laws they are called *Legales homines*, a word very familiar in Writs and Inquests, &c.

Si

Si testarentur hominem, de bona vita, & [a] legalitate, purgaret se judicio comitatus, &c. and in the dayes of *King Ethelred*, who was much infested with the *Danes*; he took order for the like sort of *Tryal*; which was then one of the sorts of (and was called also) *Purgation*; where one that was accused was to take this course; *adjunctis sibi Thanis quinque omnem criminis suspitionem diluito*; and presently after, in the same manner and almost in the same words it is repeated, *ascitis sibi Thanis quinque crimen eluito, &c.* In the *Laws* of *King Ina*, it is provided, That there should be such a *quantity* of *Land*, containing a certain number of *Hydes*, requisite for the judging of some men for mis-demeanour; as in the XLVII. *Law*. *Si cui objiciatur furto surripuisse rem aliquam, vel furtim subductam admisisse, is pro ratione* LX. *hydarum se culpa liberato, si modo dignus qui juret habetur. Anglus furti postulatus, duplici se purget numero, Wallus majore juratorum numero non obstringatur.* Here you see the *two last* referr to the *first*; and *both* to the *number* of *Jurates*: which what they were, was to them so well known, that they thought it needless to set it down any otherwayes than by the *number* of *Hydes*; which form occurrs frequently up and down in those Laws; but in the XIX. of the said *King Ina's* Laws, I find somewhat that gives an explanation to the former recited Law, where it is said: *Regii villici jusjurandum* (if he be a Master of a Family, or a House-keeper) *ejus est momenti ac ponderis ut cum* LX. *Terræ hydis exequari intelligatur*; in the same manner was it among the *Welsh*; where they were to the *number* of XLII. as in several of the *Laws* of *Howel-Dha*; and in the *Epitome* of the *Customes* of *Arcenefeld* in *Domesday* is to be seen; which

I.

I ſhall for brevity ſake omit. Again the very *Fabrick* and *make* of all our *Laws*, as now at preſent, is not at all different from the antient way of *contexture* of them among the *Saxons*; in their * *Mickel-gemote* and their *Wittan-gemote*, both theſe together having received the *Norman denomination* of *Parliament*; although the thing is one and the ſame. But that which is of greateſt perſwaſion and force with me, is, that they had in the time of the *Norman Conqueſt*, (contrary to the common received opinion) the ſame way of making *Claim* for *Lands* and *Titles* as before; which the word *Calummare* doth *ſignifie*, and which * Sr. *Edward Coke* ſaith, was a *word common* to *both*; if it proves ſo, then probably uſed by the *Saxons* before the *Conqueſt*. The *controverſie* between *Warren* the *Norman*, and *Sherburn* of *Sherburn in the County of Norfolke* (Illuſtrated by Mr. *Campden*) ſhews that all things in that age did not paſs ſolely according to his will; for notwithſtanding the *Caſtle* of *Sherburn* was given by the *Conqueror* to *Warren* (*his great favourite*) yet upon the allegation of *Sherburn*, that he did never bear Armes againſt him, but was his Subject as well as the other, and held his Lands by *that Law* that the *King* had *eſtabliſhed* amongſt all his *Subjects*, The *King* gave judgement againſt *Warren*, and commanded that *Sherburn* ſhould hold his *Lands* in *Peace*. This is cited as almoſt the only Act of favour the *Conqueror* did; whereas it is miſtaken, for it was an *Act* of *juſtice*; and ſuch Caſes do frequently appear in that *Record called Domeſday*, where I finde among others, this concerning the *Mannour* of *Cerdeford* in *Hanteſcire* held by *Hugo de Port*.

* Iudge *Dadridge* in his Treatiſe of Nobility writes *pag.* 121. of a Treatiſe which he calls very antient, denominated, *De modo tenendi Parliamentum tempore Regis Edw. filii Regis Ethelredi.*

* *Coke* upon *Lit.* lib. 2. cap. 12. Sect. 234.

In iſto Manerio tenet Picot 11. v^s. & dimid. de Rege. Phitelet tenuit in alodium de Rege Edwardo pro Mannerio. Iſtam terram calumniatur VVillielmus de Chernet, dicens pertinere ad Mannerium de Cerdiſord feudum Hugonis de Port per hereditatem ſui Anteceſſoris; & de hoc ſuum teſtimonium adduxit de melioribus & antiquis hominibus totius Comitatus & Hundredi, & Picot contraduxit ſuum teſtimonium de villanis & vili plebe, & de prepoſitis qui volunt defendere per Sacramentum aut per Dei Judicium, quod ille qui tenuit terram liber homo fuit, & potuit ire cum terra ſua quo voluit. Sed Teſtes Willielmi nolunt accipere legem niſi Regis Edwardi, uſque dum definiatur per Regem, &c. *Hugo de Port*

Ex Domeſdei. Hanteſcira Trā Tainór. Regis.

Alwi filius Torber tenet Rocheborne. Uluiet tenuit de Rege Edw. in Alodium pro manerio, de iſta hida, i. virg. quam calumniabatur: dicit Hund. quod T. R. E. quieta & ſoluta fuit, & inde habet Aluui Sigillum Regis Edw.

Ex Domeſdei. Hanteſcire.

Trā Tainór. Regis.

Edwinus tenet Acangre, & dicit, quia emit de Rege Willielmo, ſed ſcira neſcit hoc, de hoc manerio calumniatur Prepoſitus Regis dim. hid. ad paſturam Boum Regis. Scira vero teſtatur, quod non poteſt habere paſturam nec paſnag. de Silva Regis ſicut calumniatur, niſi per Vicecomitem.

By this we ſee they impleaded their rights againſt the King.

Ex eodem. in eadem Scira Trā Willmi Arcuarii.

Iſdem tenet Cuntune, quinque Teini tenuerunt de Rege Edw. & quo volu-

having

erunt ire potuerant. Aldredus frater Ode calumniatur unam v^s. terre de hoc Manerio, & dicit se eam tenuisse die qua Rex Edw. fuit vivus & mortuus: & disaisitus fuit postquam Rex Willmus Mare transiit.; & ipse dirationavit coram Regina. Inde est testis ejus Hugo de Port & homines de toto Hundredo. *Here by these you may gather several manners, and several reasons, and grounds of claimes then.*

having the *Mannour* of *Cerdiford* from his *Ancestors*; *William de Chernet* makes claim in his behalf against *Picot* who held some part of it, and makes proof of it by the *testimony* of the *chiefest* and *best* of the *Country*, and also of the most *antient* of all that *Hundred*. *Picot defendant*, produceth the testimony of the *villagers*, and men of no *account*, and *Reeves* or *Bayliffs*, who offer their oaths, or the ordinary wayes of *purgation*, (which was their *Ordeales*) that he that held that Land was a Free man, *et potuit cum terra sua ire quo voluit*; that is, as not *dependant* of that *Mannour*, nor of the *customes* thereof, might dispose of his Land as to him seemed best; but the witnesses of *de Chernet* would not accept of the *Tryal* by any Law, but that of *King Edward*, till such time as the *King* had judged it; this you must understand was about the *eighteenth year* of the *King*, the *English* still insisting upon the *Laws* of *King Edward*; which in case they had been repealed, it had been a great vanity to have insisted upon them; observe further, that *Picot* intitles the King to it, though the proof was *de vili plebe*, of the scum of the people; but that you may more plainly see, what was the occasion and ground of *forfeiture* of *Lands* in those *dayes*, and what *course* was taken for *claims* thereupon, I will exhibit another out of the same *Domesday* in the same *County*, where under the *Title* of *Terra Tainorum Regis* it is Recorded that

Alwi filius Turber tenet de Rege Tederlec, tres liberi homines tenuerunt in Alodium de Rege Edwardo. Dicunt homines de Hundredo, quod nunquam viderunt ſigillum vel legatum Regis qui ſaiſſiſſet Alwinum anteceſſorem ejus, qui modo tenet de iſto Manerio, & niſi Rex teſtificetur, nichil habet ibi; duo ex his qui tenuerunt occiſi fuerant in Bello de Haſtings. The inquiry then made, for to cauſe the *forfeiture*, was this; whether the Land did belong to any one that was in the *battel* of *Haſtings*, and there did take part with *Harold*, againſt *King William*; which is the ſame that *Sherborn* pleaded for himſelf againſt the *Kings* gift of his Land to *Warren*, that he did never bear Arms againſt the *King*. But in *Bewrocſhire* in the ſame *Record* under the *Title* of *Terra Regis* it is, that: Pandeborne jacuit in firma T.R.E. & poſt tenuit Aluuoldus Camerarius; ſed Hundr. neſcit quomodo habuit. Frogerius poſtea miſit in firma Regis abſque placito & lege; by which we may gather, that notwithſtanding the *emituling* the *King* to the Land, yet the Candor and Integrity of the *Surveyors* at that time was ſuch, that they return it to be put under the Kings Rent *abſque placito & lege*, without either hearing or Law; that is unjuſtly; for *placita & leges* at that time were as much obſerved to evince the *right* of *poſſeſſion* as *poſſibly* could be *expected*. But to come to that common objection, that

that our Laws are delivered to us in the *French-tongue*, I ſhall not take much pains to confute it; for that it is evident, our antient Laws, I mean the Common Laws of the Land, are neither *written* or *Printed* either in *French*, *Engliſh*, or *Latine*, or any *other Language* that ever I could hear of, but ſtill remain like that which *Cæſar* reports of the Learning of the *Druids* (who were our antient *judges* of the Law) not committed to *Parchment* or *Paper*, and may (for ought I can perceive) have that manner and Cuſtome continued and retained from the *Ages* of the *Druids*. Certain reports upon Caſes of Law by ſeveral *excellent Lawyers* in our law *French* are rendred to us: but we may as well ſay the *Comment* is the *Text*, as imagine thoſe ſtudious *illuſtrations* to be the *Law*; and ſome there are that (probably) believe becauſe our *Common-Laws* were never reduced into a *form* or *Body* ſo as to receive a *readition* in that or any other *Language*, that the *Kings* in thoſe *firſt Norman times* might undeſtand them, who in their perſons did publickly preſide, heard Cauſes and gave Judgement, that therefore thoſe Caſes and Pleadings in *French* were preſerved; which Caſes gave only the reaſon of the *Juſtice* of the *Law* as to the *diverſity of concernments* of the *Subject*; and upon this it is, that M^r. *Campden* giving the reaſon that one of our Courts is called the *Kings-bench* (*Bancus Regius*) *ſic dictus* (ſaith he) *quod in eo Reges ipſi præſidere ſoliti, &c. Judices ſunt præter Regem ipſum cum intereſſe voluerit, Capitalis Angliæ Juſticiarius & alii quatuor*; and in likelihood the *King* in perſon ſitting there, gave the occaſion in thoſe times of the pleadings in *French*, which otherwiſe could not have been underſtood by thoſe *firſt Norman Kings* that did

did not understand *English*; they addicting themselves in Letters, in Discourses, in Messages and in all things to the *French Tongue*. I proceed now to the second particular which is looked upon to receive so great an *alteration*, and that is our *antient Customes*; though much upon this point comprehensively in the former discourse of our *Laws* hath been said; where the Custome was antiently to claim Lands by the Country; it continued so at this time of the Conquest, as we see in many places of *Domesdey-book*, where it is said: **Scira dicit, Comitatus dicit, Hundred: dicit,** &c. as in the *Saxon Laws* all was brought to the *Hundreds* and *Shires*, so in the 34. *Law* of *King Edward* there it is of a ðrihinga, which is the *circuits* of *three or four Hundreds* in a *County*, *et quod autem in* ðrihinge *definiri non poterat, ferebatur in Scyram*, what could not be judged in the *Hundred*, was brought to the *Shire*, where at a certain place were kept the Pleas of the County, and where were to be present, (take them as I find them recorded) *Episcopi*, *Comites*, *Vicedomini*, *Vicarii*, *Centenarii*, *Aldermanni*, *Præfecti*, *Præpositi*, *Barones*, *Vavasores*, *Tungrevii et cæteri terrarum Domini*, *diligenter intendentes*, *&c.* So in the *Laws* of *King Edgar*, every year let there be said he tpa rcirgemot; ⁊ ðær beo on ðær rcirgemote birceop, ⁊ re ealdorman. ⁊ þær ægher tæcan ge Godes rihte. ge peoruld rihte (*i. e.*) at the *Shire-gemote* let the *Bishop* and *Aldermen* be; and there either of them *teach Gods right* and the *worlds right*; which judgement of the *Vicenage* and *power* of the *County*, was equally used both in the time of *Saxon* and *Norman Governments*. And so small was the alteration that hapned at this time, that in this often

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beat Rex ejus vel Dominus (I believe *ejus* ſhould be ſet after *Dominus*) *ſuperiorem*, *Epiſcopus inferiorem*; and theſe pepe's are found corroborated by that Name in the Laws of *Hen.* 1. But in ſhort you will find by this *Domeſdey-book* that in moſt places of *England* it is certified they had thoſe very Cuſtomes in the *Norman Government* which they had in the time of *Edward* the *Confeſſour*: I know there be many *jocular tenures*: but whether all of them that occurr were invented or impoſed by the *Normans*, it matters not much, becauſe they did not interfere upon propriety, nor injure their other *Cuſtomes*. One Cuſtome reported to be brought in, was the * *Sealing* of *Charters*; but as I have ſeen a *Charter Sealed before* the *Conqueſt*; ſo *ſince* the *Conqueſt* I have ſeen *Charters Signed* after the *Saxon* mode, both by *William* the firſt, and his Son *Henry*, that is to ſay, with a great number of *Witneſſes* and *Croſſes* before their Names. *Edward* the *Confeſſour* made a *Grant of ſome Privileges* to the *Church* of *Hereford*, and firmed it with a *Seal*, which in one of their Regiſter books, is deſcribed to be preſerved in *Panno ſerico*, and a *memorandum* alſo of the *circumſcription* of the ſaid *Seal* to be this: *Hoc eſt Sigillum Regis Edwardi*; and in very many places of *Domeſdey-book* it is Recorded, that Lands did paſs to ſeveral people under the Seal of *King Edward*, as in *Berckſhire* under the Title of *Terra Eccleſie Abendonienſis*;

* Iudge *Dodaridge* in his Treatiſe of the Law of the Nobility and Peerage of England, in his 16 page, ſhews the manner of *Saxon* ſigning to a Charter of *Henry* 8. to his Son *Edward* when he was Created Prince of *Wales*, and Earl of *Cheſter*, where it is concluded, Theſe being witneſſes the Reverend Father Iohn *Cardinal*, and Archbiſhop of *Canterbury*, &c. *W.* Archbiſhop of *York*, &c.

donienſis ; it is ſpecified, that, Anſcil tenet Sperfold de Abbate. Edric Tenuit in Alodio de Rege Edwardo & potuit ire quo voluit, &c. de hoc Manerio Scira atteſtatur, quod Edricus qui eum tenebat, deliberavit illum filio ſuo qui erat in Abendone Monachus ; ut ad firmam illud teneret : & ſibi donec viveret neceſſaria vitæ inde donaret : poſt mortem vero ejus ; Manerium haberet ; & ideo neſciunt homines de Scira quod Abbatie pertineat ; neque enim inde viderunt brevem Regis vel Sigillum. Abbas verò teſtatur quod in *T. R. E.* miſit ille Manerium ad Eccleſiam unde erat & inde habet Brevem & Sigillum Regis Edwardi atteſtantibus omnibus Monachis ſuis ; and in that *County* under the *Title* of *Terra Henrici de Ferieres*, is, that Ollavintone : Godricus Vice-comes tenuit de Rege Eduuardo ; Hanc Terram dedit Rex Eduuardus de ſua firma Godrico ; & inde viderunt ſigillum ejus homines de Comitatu ; præter iſtas hidas accepit ipſe Godricus de firma Regis unam v. terre, de qua non viderunt Sigillum Regis. You ſee by theſe that this Sealing was looked upon, in the *Saxon* times, as of great ſtrength and efficacy to their validating of *Deeds* and

conveyances. I can willingly grant that the *Coverfeu-Bell* (continued in use till our dayes) was an Introduction of the *Norman Conqueror*; and in that there was much Reason and Policy; for no doubt but that in some places and Countrys, the *Norman* Souldiers were enforced to lodge dispersedly, and so it would be fit and convenient that the *Country* should observe that timely Decorum and Order, not onely beneficial to themselves, but also to those enquartered, whose Guards would be the more disintangled, the more they had of freedome from the company and walks of the *Country people*; and as the *Ringing* of the *Bell* was then; so to the same end at this day the *Taptoo* is used in *Garrisons* and *Quarters* by the *beat* of the *Drumm*. What the inducement to the observation of the *Coverfeu* might be I know not; perhaps it might be, the Knowledge of that entertainment which the *English* bestowed upon the *Danes* on S^t. *Brices Evening*; and at this time of the Conquest there were (in probability) many living that were not only *eye-witnesses*, but also *Actors* in that *Tragedy*. Another innovation received at this time according to the account of some, was the *settlement* of the *Court of Exchequer*; of which *Campden* out of *Gervasius Tilburiensis* thus writes: that *ab ipsa Regni conquisitione per Regem Guhelmum facta, hæc curia cœpisse dicitur; sumpta tamen ejus ratione a Scaccario transmarino*; which are all the innovations that at present can remember that are imaginable to be introduced at this juncture; which if more, were not considerable enough for to be a ground of so much exclamation. I proceed to the *third Particular* said at that time to be much altered; and that is, *our fashions*; of which I cannot say much;

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and leſs, if I were to ſpeak of our Faſhions now a days, conſidering how much we are become the *Frenchmens Apes*; but yet I know not whether a ſerious obſerver can find by any *probable Record*, or by the obſervation of antient *Monuments*, any ſuch *Alteration* of *Faſhion* as is here affirmed; the ſame manner and form, deſcribed to be then in uſe, continued many years after, if any thing may be Collected from thoſe Habits expreſſed in the *Monumental Effigies* of ſeveral *Perſons* of thoſe *Ages*. Another *Alteration* ſaid to have hapned is of our *Language*, concerning which Mr. *Daniel* hath (not without need) made a Retractation, and ſaith, that *the Body of our Language remained in the Saxon; yet it came ſo altered in the habit of the French tongue, as now we hardly know it, in the antient form it had; and not ſo much as the Character wherein it was written, but was altered to that of the Roman and French, now uſed*: I know not what *Habit* he means, but this I can affirm, that our Language hath in it little of the *French* from the *Norman* Conqueſt; but continued as the *Normans* found it, abating only ſuch changes and refinements as Languages receive in the like ſpace of time; there being not to be found ſo much in the *Engliſh*, as the very *French* it ſelf, from its ſelf, without any ſuch violent Impreſſion, as this Conqueſt may ſeem to inforce: And I would deſire of any one that hath obſerved the *Gradual decay of* our *Primitive Engliſh*, or *Saxon*, what remarkable difference in any thing conſiderable there is to be found, betwixt that of *Edward* the *Confeſſour's* time, and that in which *Chaucer* wrote; as alſo how at this day the *Saxon Idiom* is yet retained among the

Commonalty in many *Counties* of *England*; understand it more especially to have relation to such places that are most *Northern* and further distant from *London*, (a City of great *Forein commerce*, and the usual residence of the *English Court* for many hundred years) for it is plain to me, that the present *Scotish* hath very little receded or altered from the *English* or *Saxon* antiently used; and by comparing of the Writers of several Centuries together, the refining of the *English tongue* hath not been considerable from Age to Age, till within these last *Hundred years*: so that at this instant, I cannot perceive into what habit of the *French tongue* it is altered; nevertheless I am not ignorant, how that in those first *Norman times*, there wanted not those of the *English*, who by their *Adulation* and *Sycophantizing*, earnestly laboured to get themselves into some repute; of whom that Age took so great notice, that in great scorn they reproved and reflected upon them, by that common Ironical proverb; *Jack would be a Gentleman, could he but speak French*; and as for the *Character* said to be changed, I have seen *Charters* of *Saxon* firmed both by *William* the *Conquerour*, and after his Reign by his Son *Henry*, surnamed *Beauclerk*, all wrote in the *Saxon Letter*; that Character being yet retained in all such Escripts that concern our Laws, and is called by the *Denomination* of *Court-hand*: And again, in some very antient *Transcripts* and *Sermons* of *Saxon*, written before the *Conquest* in their *own Characters*; the *Latin* therein cited did relinquish the *Saxon* Letters, and did espouse the old *Roman Characters*. I urge this the rather, to shew that these alterations are not properly to be fixed, as an

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effect of the *Norman* Conqueſt; and that Writers running much upon Hyperbolical expreſſions, have laid more upon this revolution than it was truly Guilty of. To what Mr. *Daniel* writes, that by this Conqueſt we received new *forms* of *Fights*, *Fortifications*, *Buildings*, and concludes, *generally an Innovation* in moſt things but *Religion*: for this laſt particle that is of ſo great extent, I have ſaid enough already to ſhew my diſſent, to his opinion; and it being ſo large in the affirmative, I dare not enter into the diſcourſe of it, for *dolus latet in univerſalibus*, and it would take up too much time; but to return to theſe three firſt particulars now ennumerated, I ſay, that probably in them there might be ſome *alteration*; for I would not be thought ſo opiniative, to believe the *Engliſh* were ſo tenacious of their own Forms and Modes, as not to relinquiſh them for better, they took up afterward new *forms* of *Fight*, and came not ſhort of the *Normans*, either in *Valour* or *Renown* in the uſe thereof; but to the *difference betwixt* the forms uſed by the *Normans* and *Saxons*, I leave the *Reader* to the *Deſcription* of that moſt remarkable *Battel* betwixt *William* the *Conquerour*, and *Earl Harold*, as it is ſet down by many *Hiſtorians*, by which it will appear that there was much difference in the *Management* and *Uſe* of *Offenſitive Arms*; But the *Engliſh* preſently by their induſtry in the *practique part* of *Arms* came to be not only famous, but alſo terrible to their Neighbours, by their Dexterity and Valour. Neither will I diſpute their *Fortifications*, yet the *Romans* left the *Brytans* excellent Notions thereof; which afterwards came into the poſſeſſion of the *Engliſh*, and were not at all ſhort of any the *Normans*

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could pretend to be *Authors* of, considering the Discipline and Arms of antient times: yet true it is, that the *Engliſh* at this time were by eaſe and ſoftneſs almoſt reduced to that Effeminateneſs, (notwithſtanding their *Daniſh* turmoils) that like as the *Britains* made uſe of them and their *Anceſtors* againſt the *Picts*; ſo now theſe *Saxons* make uſe of the *Normans* againſt the *Britains*, for the preſervation of their *Welſh Borders*; of whom a conſiderable party lay in *Garriſon* in *Hereford*, and were, after *William* the Conquerour had been here above a year, hard put to it, under the *Government* of *Scrâp*, as he is named in *Domeſdey*, by *Edricus Silvaticus*, (or *Salvage*) *Lord of Wigmore*; who at laſt was taken by *Radulfe de Mortuomari*, his Lands being by the *King* for this great Service beſtowed upon the ſaid *Radulfe*; theſe *Normans* which I ſuppoſe were introduced by *Edward* the *Confeſſour*, the Conquerour took care of in a *Proviſional Law*, which carries this *Title* before it: *De jure Normannorum, qui ante adventum Guilielmi, Cives fuerant Anglicani*; where in the Body thereof it is, that *Omnis Francigena qui tempore Edwardi propinqui noſtri fuit in Anglia particeps conſuetudinum Anglorum, quod ipſi dicunt* Anhlote & Attſcote, (i. e. Scot and Lot as we call it) *perſolvat: ſecundùm legem Anglorum*; but this was not altogether ſo ſtrange, if we conſider the *Warlike* diſpoſition of the *Normans* in that Age, in continual Turmoils with the *French*, and the relation *King Edward* had to *Normandy*.

Their *Fortifications* were not of any great Variety; ſome were of a *round* Building of *Stone*, for the moſt part Built upon a *round pile* of

Judge *Dodaridge* in his Treatiſe of Nobility, p. 118. Writing of Knights their diſpoſing of their Eſtates in thoſe Elder times, ſaith, For they did thus

of Earth, either Natural, but most commonly *Cast up* by man's *Industry*; others upon a *small rising*, or a *plain Ground*, seldome more *Capacious* than to receive about *twenty* or *thirty Men*, and were made rather to *preserve* the *Persons* and *Goods* of the *Owners* and his *Servants* and *Tenants*, than to *endure* a *long Siege*: of which sort there are many in *Ireland*, because of their *Antient intestine feuds*; but more upon the *English* and *Scotish Borders*; many of which I have seen; but with this difference, as I said before, that those the *English* did antiently Build were round, and these for the most part *square*, with one *round Tower* at one of the *Angles*, both sorts of which were *antiently* called *Fortalices*, and seldome made use of for *Habitation*; because I find their mean dwelling Houses were made commonly under it, or very near adjoyning to it: And I discern a difference made betwixt those for *Habitation*, and those I spake of that were only for a *Safe-guard* against sudden *Inroads* and *Incursions*; for in *Domesday Book*, in the Survey of *Erdisley* in *Herefordshire*, it is there recorded, that, *ibi est domus defensabilis*, that is to say, there is a *dwelling House fortified*, (which is now called the *Castle* of *Erdisley*) and was Builded because of its *Vicinity* to the *Welsh Borders*, and was intended by that *Denomination* to signifie more than one of those *small Castles* or *Fortalices* I lately spoke of; these were the *Strengths* and *Fortifications* of those times, most frequently in use. I come lastly to speak of their *Buildings*, in which there was something of an advantagious, or at least an

order their own Lands and Tenements; one part they kept in their own hands, and in them stately Houses and Castles were erected, and made for their Habitation, and defence of their Persons and the Realm; also Forests and Parks were made there, for the Pleasures, Solace and Delight.

an honourable change, by the difference that was in the *Mode of* them: I must confess the *Norman* manner was very noble and magnificent, which by their *Churches* may be observed; for the *Saxons* made theirs with *Descents* into them, the *Normans* with *Ascents*; the first made their *Lights small* and *mean*, the *second* made them *high* and *large*; *these* made their *Arches stately* with *heights proportionable*, the *others* had their *Arches* and *Coverings low*, and made their *Walls* of so *great* a *thickness*, that they were a *great Dammage* and *Impediment* to the *pleasure* of their *Lights*; when the *Normans* made use of no greater thickness or breadth in their *Walls*, than would but well serve to bear their *Height* and *Covering*. In the antient form of the *Saxons* before mentioned, I have observed several *Churches* and pieces of other *Architecture*; their entrances (especially in their West-ends) by *Descents* inwardly, with *Arches* formed to correspond with those *gradual Declensions* and *Steps*, all which shortning towards the *greatest Door* at the bottom of the Stairs; over which for the most part was a *finishing* of a *Semicircular piece* of *Gothick work*, and together made a kind of an artificial *Perspective*. I have hitherto endeavoured in this tract to make it appear, that for the space of 1700. years past, we received no considerable *Mutations* or *Alterations* in our *Laws* and *Customs*. That this our *Tenure*, the subject of our present Discourse, hath had the fortune to continue here, from our *British aborigines*, (the first *Planters* of our *Isle*) through those several changes and revolutions of Affairs and Governments that have hapned to it since that time; and although in this Discourse preceding,

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I may be thought to have walked a little beſide the path, yet I am perſwaded I have not miſſed the way, but kept and preſerv'd the Goal in my eye. Thoſe alterations that are now found as to the general uſage of this *Tenure*, (which was the Super-eminent cuſtom of this *Nation*) proceed not at all from any Enforcement or Coercion by reaſon of any of theſe fore-mentioned Intruſions or Conqueſts, but clearly by the conſent and deſire of the Proprietors and Perſons therein concerned: for in the *County* of *Kent*, where *Mr. S.* ſaith, this *Tenure* did generally over-ſpread; there (I ſay) in the time of *Hen.* 8. ſeveral *Lordſhips* were *diſcharged* of this *Tenure* by *Act* of *Parliament*. I have not all this while pleaded for the ſettlement or goodneſs of the *Tenure*, to be uſed in this Age, where Lands are well Peopled and fully Inhabited, for it would be the deſtruction both of *Lands* and *Linage*; but my buſineſs hath been to enquire into the ſtate of the queſtion, the true *Original*, *Etymology*, and *Uſe* thereof. The people of *England* by degrees have inextricated themſelves from much *ſervitude* in their *Cuſtoms*, and are now inſtated into a great *privilege* of *Liberty*, and more particularly from thoſe heavy *preſſures* of *Villenage*; the *Slavery* of which *Cuſtom* hath received its *Deaths wound*; *in favorem libertatis*, for Sir *Edward Coke* out of *Forteſcue* hath this note, *Impius & Crudelis judicandus qui libertati non favet*; and gives this as the reaſon of it, *Angliæ jura in omni caſu dant favorem libertati*; the ſenſe of Liberty was of ſo great force and power, and the favour due unto it, according to *Law* and *Right* of ſo great reſpect, that thoſe and the like preſſures have received change and

alteration, and by the ſame power, and equity, (joyned with the conſent of the Proprietors) it is ſo come to paſs alſo, that this our *Gavelkind* in moſt places of *England*, is turned into the *preference* of *Primogeniture*, for the *preſervation* of *Houſes* and *Lands*: the next Chapter ſhall enquire, though it ſeems to return far back, whether we have any ground to believe, that the

CHAP. V.

Trojan Brytains uſed the Tenure of Partition.

I Could not paſs by without taking notice of a *Marginal queſtion* that *Mr. S.* makes in *pag.* 54. and it is this; *By the way*, (ſaith he) *how do our Britains claim deſcent from the Trojans? Sith with them the eldeſt Son, by Prerogative of primogeniture Monopolized the whole Inheritance.* I know not what *Authors Mr. S.* hath met with, that he affirms ſo poſitively, with our *Britains* the *eldeſt* Son did *Monopolize* all; if his, *Sith with them* relates to the *Trojans*, I have nothing then left to anſwer to it, nor do I think it worth the while to concern my ſelf therein, believing that neither *Dares Phrygius*, nor *Dictys Cretenſis*, nor *Homer*, nor any other pretended *Trojan writer*, did intermeddle in the relation of Deſcent. But I am perſwaded, it muſt have *reference* to the *Brytains*, and that to them it is that he ſaith, *Sith with them the eldeſt Son Monopolizeth, &c.* and notwithſtanding I have ſome inducements to believe, that *Mr. S.* asketh the queſtion (*how our Britains*

claim

claim Deſcent from the Trojans?) in Merriment and Jeſt: yet in their defence to that very queſtion, there may ſo much be ſaid, which will carry a greater probability, than any one that rejects it, is able to produce of another original. I told you before what *King Edward* the *Confeſſour* writes concerning the *City* of *London*, that, *Fundata erat olim & ædificata ad inſtar, & ad modum, & in memoriam veteris Magnæ Trojæ*, he calls it *veteris Magnæ Trojæ*, as if there were a *younger Troy*; for perhaps that Age had the conceit alſo of its being called *Troinovant*, founded and built in the memory of the other *old Troy*: which in caſe it ſhould prove to be ſo called, what reaſons had the firſt Founders to make it *ad modum* and *in Memoriam* thereof, unleſs they had been related thereunto? I am not ignorant that the *City* of *London* had its ſite in the *Country* of the *Trinobantes*, the ſound of which name might very probably adminiſter much to the conceit; but my deſign now is to weaken the Vulgar opinion begun by the ſecret *Diſtaſt* of *Polydore Virgil*, and followed by very many; imputing it to be the Fiction of *Galfridus Monumethenſis*, who was the *Tranſlator* only of a *Hiſtory* out of ſuch a Language as *Polydore* did not underſtand, notwithſtanding his being a *Canon* of *Hereford*; and ſo conſequently Living very near to *Wales*, who ſetting out his *Engliſh Hiſtory* in the time of *Henry* the *eight*, in which (as much as in him lay) he laboured to diſparage the *Britiſh Antiquities*, and not only ſo, but under the *Patronage* of *King Henry*, having power to *ſearch* all *Records*, is reported to have ſeiſed the moſt Antient thereof (that were in beeing) in the *Treaſury* of *Landaf*, and to have Deſtroyed them;

something of which nature I have also seen; for in a *Register book*, compiled by * St. *Thomas de Cantilupe*, I found three leaves cut out; which by a constant and confident Tradition of the Registers of the Diocess of *Hereford*, in whose Custody that Book was, it is averr'd that this was done by *Polydore*: But as soon as his *History* was made publick, he was encountred by Sir *John Price* in his Book entituled, *Defensio Historiæ Brytannicæ contra Polydorem Virgilium*; unto his labours I shall referr the *Desirous Reader*: but among other things well worth the View, he shews the probability of the first *British* Planters here; their *Extraction* and *Derivation* from the *Græcians*, back'd with many considerable Arguments and unvulgar Observations upon *Antiquity*, taken from their *Language*, *Letters*, *Names*, &c. But here we may observe, that the Conjecture of *Trojanism* was far more antient than the *Virgilian* opinion would make it to be; not only by what I have gathered out of that Discourse (newly cited) of *King Edward* the *Confessour*, concerning the exemplar of the Foundation of the *City* of *London*; but also long before this, from an Expression of * *Ambrosius Telesinus*, a *Monk* of *Bangor*, who lived in the first *Age* of the *Saxons* enterprize upon *Brytain*, and by the *Welsh* is honoured with the Title of **Penbeird** (i. e. *princeps Bardorum*) he, in one of his **Cants** largely discoursing of the *Saxons*, their Violence and Rapine, by an *Apostrophe* reverting from them, to give

* Bishop of *Hereford*.

* M S. *penes Authorem & citat. à Joanne Prisæo in Defensione sua Histor. Brit. &c.* Of whom *Balæus* among his antient Writers saith, *Teliesin, Claruit Anno salutis humanæ 540. Arthuro adhuc in Brytannia regnante.* Mr. *Wheelock* out of an antient MS. in Trinity Coll. *Camb.* in his Comments upon *Bede* cites this of him com þe gode Bruigt þat þaſ þe ſurſte man Þat louerd þaſ in Engelond; that is, of him (viz. Dardan) came the good *Brute* that

give comfort to his Country-men the *Brytains*, in the midst of such Disasters, expresseth himself thus: *Now will I return* (y Wendilion Trojon) *to the reliques of Troy*, plainly by the ensuing Discourse intending the *Brytains*, whom he supposed to be the off-spring of the preserved remainder after the *Siege* of *Troy*; and those that have endeavoured the reducement of *British Words* and Denominations to an *Original* from the *Greek*, have done it with good success, and without any such force as many *Etymologists* of other *Languages* have laboured under; and perhaps the *Antient name* of this our *Island* will with more probability be found from that *Language* than from any other; for surely the latter part of it seems to be a *Greek Termination*, as in several Appellations, believed to be by them imposed upon places, is to be perceived; like as in *Lusitania*, *Mauritania*, *Tingitania*, &c. which is taken to signifie *Regio*, a Region. But to Mr. *S*'s question, strengthned with this position, viz. *That with them the eldest Son by prerogative of Primogeniture Monopolized the whole Inheritance*, I answer, that if our *Brytains* do claim Descent from the *Trojans*, those that had but looked into the *Trojan British History*, might with small labour have found, that *Brute* the *Trojan* had three Sons, *Camber*, *Loeger*, and *Albanact*, and having the whole Island at his dispose, Divided it amongst them; from whose names (it is affirmed by those that write this Story) that the *Triplicite*

was the first man that was Honoured in *England*, or Lorded there.

Sir *Edw. Bisse* (my honoured Friend) in his Notes upon *Upton* writes p. 41. *Joannes Hantvillensis, sive Hantwillensis; Nostras, Clarvit anno* 1200. *regnante Joanne libros de Bruto* XVI. *(quemadmodum in Gesneriana bibliotheca Simleriana legitur Epitome, sed Pitseus ait, poemi id libris* IX. *constare) ludebat, Archithrenium autem appellavit, &c. ---- atqui hinc ipse etiam Archithrenius nominatus. Eum laudat Petrarcha, Giraldus, Vives, Vossius, Textor, Balæus & Textor.*

Triplicite diviſion of *Cambria*, *Loegria*, and *Albania*, firſt took their Original; and it is obſervable, that the *Brytains*, the antient Proprietors and Inhabiters of this Land, know not themſelves under the Denomination of *Welſh*; * that Word being as much a *Stranger* to them, as in its own Natural ſignification it is unto it ſelf; for by it do the *Dutch* call the Bordering *French* and *Italians* unto this day; and is that Appellation which the *Saxons* impoſed on the *Brytains*, who (like unmannerly Gueſts) called their *Land-lords* or *Hoſts* (the true Proprietors) even (*as I may ſay*) in their own *Houſes*, *the Strangers*.* But the *Brytains* did antiently, and ſtill do call themſelves **Cymri**, their Language, **Cymraeg**, and this fancied to be from **Camber**; the ſame *Brytains* call *England* in their own Language **Lloiger**, upon the ſame fancy as before; ſuppoſed to be denominated from **Loeger** (another of the Sons of *Brute*) yet notwithſtanding they call ſuch Inhabitants as live in this part and diviſion by them named **Lloigria** or **Lloiger** (now differenced from the other parts by the name of *England*) **Saiſon**, that is to ſay *Saxons*, who (together with the *Jutes* a third ſort of *Provincials* that aſſiſted in the Conqueſt of this part of *Brytanny*) are now under the ſingle Title of *Engliſh-men*; theſe **Cymri** alſo, call the Speech generally ſpoken in *England*, **Saiſnaeg**, (that is to ſay) *the Saxon tongue*. Somewhat doubtleſly there is of extraordinary reaſon, in theſe names of diſtinction

* *North-Gales. Wales. Wallia* cometh of the *Saxon* word *Wealk*, which ſignifieth *Peregrinus* or *Externs*, for the *Saxons* ſo called them; becauſe in troth they were Strangers to them; being the remain of the old and antient *Britains*, a wiſe and warlick Nation, inhabiting in the Weſt-part of *England*. Theſe men have kept their proper Language, for above theſe thouſand years paſt, and they to this day call us *Engliſh-men*, *Saiſons*, (that is) *Saxons*. *Coke* upon *Littleton*.

ſtinction and difference of *Cambria*, *Loigria*, and *Albania*, in caſe we could recover it: but I am afraid the truth in this point is loſt, for the Denomination of places from the names of men, as it is an old and fond conceit, ſo I think it an ill one; * and for my part, I had rather believe that *Brytannia* is derived from the *Greek word*, *BRYTON*, which ſignifies *Vinum Hordeaceum*, (that *Britiſh Ale*, a Drink, how Con-natural and antiently peculiar to the Inhabitants of this *Iſland*, will be now needleſs to Diſcourſe) than that *London* is the refined Iſſue of *Luds-town*, or *England* of *Hengiſts-land*, or *Scotland*, from one *Captain Scoto*: But this antient *Triplicite* diviſion, whether the effect of *Brutes* partition, or no, I will not maintain, yet it is recorded by the ſame Pens as give us our Hiſtory of *Trojaniſm*, and may ſerve very well in anſwer to Mr. *S*'s Jocular queſtion, ſince his queſtion is a queſtion taken for granted. Neither will I averr or much inſiſt upon that action of *Conſtantine* the *Great*, who being in *Brytain*, and ſo probably experienced in the *Britiſh Cuſtoms*; that he, upon this ground or cuſtom of partition uſed among the *Brytains* his Country-men, did Divide the then intire *Roman Empire* between his two Sons; by him (I ſay) this diviſion and partition was made, be the reaſons or grounds of it what they will; and upon this Diviſion were differenced and diſtinguiſhed by the Appellations of the *Eaſtern* and *Weſtern Empires*, which afterwards again returning into a ſingle Perſon, came to *Theodoſius*, (whom * *Procopius* calls a moſt juſt Prince, and a great Souldier) he had two Sons, who after his Death ſucceeded in the Empire, *Arcadius* the Elder in the *Eaſtern*, and *Honorius* in the *Weſtern*

* As it is remarked by Sir *J. B.* and may be worth the Enquiry.

* Procop. Bel. Vandalic. l. 1. c. 1.

Western Empires; which is said to have been done, *according to the former division*, viz. That which the *Emperour Constantine* had made; so that the use or custom of *partition* in *Empire* as well as in private mens Lands is of great *Antiquity*. I proceed now to shew that there is

CHAP. VI.

Gavelkind in other places of the Kingdome of England besides Kent: in the Principality of Wales. Gavel used in denominations of places; how used among the Welsh; of the word Llan: *of the Normans invasion of the Territory of Wales: the use of* Gavell *in the division of that Territory; and exposition thereof in the Welsh Vocabulary.*

Mr. *S.* is much given to think that this *Tenure* of *Gavelkind*, is a singular appurtenance to the *County* of *Kent*. For in the first page of his book as the Theam of his discourse, he layes down this position: *that Gavelkind is a property of that eminent singularity in the Kentishmens possessions; so generally in a manner from great antiquity over-spreading that County, as England this day cannot shew her fellow in that particular*; and in his 54th. page, *For other Country-mens communicating with us of Kent in the Tenure, I conceive* (saith he) *it first came up by imitation of our example; in Ireland especially, and amongst the Welsh-men, in whose Vocabulary or Dictionary the word is sought in vain, as it is also in that old Statute which concerns them*, viz. *Statutum Walliæ*:

To

To evince this, beſides the knowledge of ſeveral other places in *England*, that have this *Tenure* eminently unto this day; ſomewhat that *Mr. S.* himſelf doth confeſs in his *Tract* will help to cleer the contrary; as in particular where he teſtifies *pag.* 48. that *Socage Land* in general, and by the nature of it, is *capable* of *partition*, and by *Cuſtome* may be, and in many places *extra Cantium*, is *partible*. Now ſo it is, that there is no *County* in *England* but have *Lands* held in *Socage Tenure*, and upon that reaſon are capable of *partition*; but more eſpecially in *Wales*, where the word is in uſe among them, and more to a juſt and proper ſignification, than in any other place, or by any other Language, as I ſhall ſhew anon. But Mr. *S.* from its very denomination, (under the notion of it I mean) would perſwade us to a belief of its *ſingularity* in *Kent*; which I cannot admit: for notwithſtanding he hath not found any Lands in any other place to paſs under that denomination; *becauſe* (ſaith he) *the Land in any deeds or conveyances hath not any appellations of Gavelkind*; yet I ſay, uſe and cuſtome hath ſtill inviolably retained it; and the manner of its partition is in ſeveral places known under the very Title of *Gavelkind*. There are names of places that are compounded of the word in controverſie, only to be found among the *Welſh*, (the antient Proprietors of this Land) from whoſe *Language* I ſhall make it my deſign to derive its Origine; and ſhall begin with this part firſt, becauſe very much of certainty in antiquity, is to be drawn from the retained names of place; which if ſeriouſly remarked will afford us a great light to Hiſtory. There is a *Village* or *Pariſh* in *Monmuthſhire* that adjoyns to the *Territory* of *Urchinfield* in the Coun-

ty of *Hereford*, called to this day **Llangattok fethon afel**, which if any one attempts to read to a Welshman, let him be sure to pronounce the single *f* like a *V* consonant, and then to be read by this power, *Chlangattok vybon avel*; but the common denomination thereof without the variation, proper to the Welsh Tongue, is, **Llangattok gafael methon. Llan**, or, (as it is rendred by our *English* writers,) to express the *idiomatisme* of the *British*) **Lhan** and *Chlan*, signifies a Religious dedication, or *locus sacer*, and *Doctor Davies* in his *Cambro-britisb Dictionary* upon the same word, saith, that, *vulgò sumitur pro fano, templo, sed potius extimo* (he addeth) *significare cœmeterium vel aream Templi*. Let it be either *Church* or *Church-yard*, it doth intimate a Religious dedication, and notwithstanding there are at this day many places that have the præfix of **Llan** unto them, where no *Church* is to be found, yet if searched into and traced to their foundation, will discover some such appropriation and intendment. So I find in the forementioned *Region* of *Urchenfield* a certain Parish called **Hen-llan**, (commonly *Henland*) which in the *English* Tongue signifies, the *Old-Church*; and in certain Pastures belonging to a Farm in that Parish, there is a place which to this day is called **Llanfaurtur**; which is as much as to say, The *Church* or *Convent* of the *Brethren*; the Site whereof was upon a small hill, not half a mile distant from *Heuland*. The ruines of which place, with its old Foundations are yet to be seen, and was a place dedicated to Holy use, for there it was, that the *great College* for one *Thousand Students*, was founded by St *Dubricius* the *Prince* of this *Region*; to repell the *Progress* of the *Pelagian Heresie*; who

who ſucceeded his Grandfather *Pibaum* King of *Ergin* (the old name of *Urchenfield*) and in the dayes of King *Arthur*, was made *Archbiſhop* of *Caerleon*. But I am gone too farr, my intentional digreſſion was onely to ſhew that Llan was not ſolely appropriated to *Churches*, but antiently to any place, intended for a Pious uſe and exerciſe. But to proceed to the other part of the word, which is very facile, and is the name of the *Saint* to which this Church was dedicated; and ſo the ſignification in the denomination inferrs no more than *Eccleſia Sancti Cadoci*; which ſtrange *Saints* name may cauſe ſome to wonder, as not finding it in their *Calenders*; but they muſt underſtand, that the *Brytains* had amongſt themſelves, a great number of Saints, who were not *canonized* by the *Authority* of the *Pope*, but by themſelves; and this by a *long continued Cuſtome*; which privilege was ſo familiar among them, that by that Authority and Cuſtome, almoſt every *Biſhop* made his *Predeceſſor* a *Saint*; but theſe denominations of dedication, compounded with ſome remarkable diſtinction, do frequently occurr among the *Welſh*, as Llanthangle-Arrow, Llanthangle-Eskle, which are ſo called by them unto this day; and by them when they ſpeak *Engliſh*, (as well as by the *Engliſh* themſelves thereabouts inhabiting) are called *Michael-Church-Arrow*, and *Michael-Church-Eskle*, from the *two Rivers* upon which they are ſituated, and afford the true interpretation of their names; their ſuffixes being (as I ſaid) to difference them from others of the ſame Title in the beginning; in like manner is it with this Llangattok, who for difference ſake from ſeveral others of the ſame *dedication* in that Countrey, is called Gavell-Fethon, or

Feibon-afel; but not as it is most corruptly in several *Maps* of that Countrey written; so, that the *Welsh* could as little be able to retrive the mistaken writing of that word, as the *English* could understand the *Orthography* thereof. It being Printed *Llangattok-vinon-avel* in most of the *Mapps* of the *Countrey*, and lyes not far from *Herefordshire*. But the *British Norma loquendi* gives these several sounds, as by the familiar transmigration of *M* into *F*, which last must be sounded like an *V* consonant in the *English*, or like a *Beta* or *Vita* in the *Greek*; and such is their manner, that they make these changes, whensoever it happens that certain Consonants end the fore-going *words*; as Fab (*filius*, a Son) transmigrates into Fab Feibon (*filii*, *Sons*,) into Feibon; so also upon such accidents by vertue of their *idiomatism* they leave out the Letter *G*, as it hath falln out in these two words. But what am I run into? I am got out of *History* into *Grammar*! I shall only to put it out of doubt inform you, that Feibon afael, is the one and the same with gafael meibon, which together with its *dedication* Llangattok feibon afael signifies *Ecclesia Sancti Cadoci de tenura puerorum*, (*the Tenure of the Children.*) It will fall out conveniently now to speak to what Mr. *S.* saith, of the *Welsh* concerning the *word*; that in their *Vocabulary or Dictionary it is sought in vain.* The word Gafael (or as by our *English* pronunciation it receives force and power in the imitation of sounds is, *Gavel*) commeth from the British verb Gafaelu, which as *Doctor Davies* in his Dictionary renders it, is, *Tenere*, *Prehendere*; and in the most ordinary discourse the *Welsh* to this day have the use

use of the word, expressing themselves thus, or in the like manner, * **Cymmeroch chwi gafael**, which is in *English* to say, *Take hold*. I have wrote it in that manner for the easier reading of it upon the force of the Letters; but it should have been thus written, **Cymeroch ỽ chwi gafael**. In the same sort they retain the antient denomination of an *Officer*, which they call **gafael-swyddog**, and was an *Officer* for *Arrest*, being derived from this **Gafael**, which is no more, than the *Officer* his *holding*, or *laying hold* of a *person*; (**Swyddog** is an *Officer*; but most commonly it is taken for a **Magistrate** as in the *Laws* of *Howel dda*.) Lastly, *Forceps*, a pair of *fire-tongs*, is nominated in the *Welsh*, **Gefael**, derived still from the verb **Gafaelu** to *hold*, and is a denomination from the *use*; alwayes provided (as before I have said) you remember the pronuntiation of the single *F*. But to pass by this, which proves the word sufficiently in use and knowledge among the *Welsh*, and to be *found in the Welsh Voeabulary*, I come now to an objection which may be made concerning the denomination of this *Parish*; which some may fancy to have been a late Act, and that the *additional cognomen* of it, might be caused by, and be the proceed of, some special remark of this *Tenure*. To which I reply, passing by what before seems most probable, that all Lands among the *Brytains* were *partible*; yet there may be somewhat in the distinguishing name of this *Village*, for when most of this *Country* was wrested from the *Welsh* by the *Normans*; (for till then, the *Welsh* did enjoy it) this Village by the favour of the *possessing Conqueror*, may probably retain this *Custome*, and accordingly have its *appellation*; for we must understand that *King*

* Judge *Doderidge* in his Treatise of the Nobility saith, page 53. of it of *Tho. Thomas Aquinas* setteth down a more certain Rule (saith he) *in verbis videndum non tam à quo, quam ad quid sumitur*, and words should be taken, *sensu currenti*, for use and Custome is the best Exposition of Laws and words, *quem penes arbitrium est jus & norma loquendi*; where propriety and true sound in words meet, this Rule or discourse cannot reach; for, *nomina sunt omnia*.

King William the first not being able to satisfie the expectations of all his Assistants, with the forfeited Lands of the *English*; gave leave to several persons to get what they could of the *Welsh*; and it was not till his Sons dayes, *William* the second, that *Glamorgan-shire* was attempted; these persons having at that time liberty of *constituting Regalities*, and *jurisdictions*; as I have seen by a Charter to *Brechnoc*, from *Bernard Newmarch* (or *de Novo mercatu*:) and as *Cheshire* so was *Gladmorganshire* erected into a *Palatinate*. But there is no reason to believe the additional name of this village was of so novel an imposition, as to carry no greater antiquity than the *Norman Conquest*; for in case it were so, it was not probable the *Brytains* would give an appellation to it by a name whereof they knew not the meaning, and crowd this *Saxon* word (as Mr. *S.* would have it) in the midst *of Welsh*; so that it carries argument along with it, that the word is rather of a *Welsh parentage*, and that there is no other conceit in the name, but what referrs to the *Tenure* of *Partition*. The *Brytains* enjoyed that part of *Wales* in the *Saxon Governments*, and had not any *fixed impression* upon them, by any, before the *Normans*, who over this County at last, stretched their victorious Armes after many various successes on both parts, and stout defence made by the *Welsh* for their *Lands* and *proprieties*; enjoying it partly by *force*, and partly by *composition and agreement*; as the private family Histories do manifest which I have seen: for there are several *Familyes* of the greatest note in that Countrey, that are able to produce *testimonyes* of enjoying their *Lands* and *Birth* in that *circuit* of Land (for *Shires and Countreys are not of a Welsh institution*) before the

Norman

Norman Conquest; so that by this it is probable they did not subvert all, neither were they in quiet about *Abergaveny* after the Reign of *Henry Fitz Empress*, *Gyraldus Cambrensis* relates a series of their Actions in those parts. But to leave these storyes, I think it least of all probable, that the *Normans* would borrow a *Kentish word*, to denominate any thing to their *British Tenants*, or plant it there as a *Kentish Custome*; seeing in case the derivation according to Mr. *S*'s *opinion*, should prove true; this denomination was as much unknown to the *Normans* themselves, as possibly it could be unto the *Britains*; and alike to both of them; if the *Normans* had found a necessity of making an intelligible expression and appellation of such a Custome of *partition*, certainly I should have met amongst them with the *Roturier*; which I understand is in use over all *France* at this day; and very frequently in *Normandy*; the *Island* of *Jersey* parcell of the *Norman Dukedome* retaining still this Custome to this day under the name of the *Roturier*, whilst her Sister *Guernesey* hath no footsteps of it; but are as different in their *Tenures* as in the nature of their *Soyl*; for in one (as I am informed (like as in *Ireland*) no *Toads*, *Spiders*, or *Venomous Creatures* will live; whilst in the other they have them in distastfull abundance. But even now I touched upon the *Saxon* division of *Shires* and *Countyes*, and told you it was not the *British Policy*; which puts me in mind of that Order that was observed by the *Welsh*, and rectified by *Howel-dda* in the ordering of his *Principality*; with the carefull intermixture of *civil-descents* and *military disposition*; wherein we shall find something to our matter in hand worthy the notice; the *description* as *Humfride Lloyd* hath written

ten out of the *Laws* and *Ordinances* of that *Prince*, is in ſhort thus; Firſt a **Cantref**, which had its Denomination from *one hundred Towns* (and ſignifies as much) under which was ſo many *Commots*, which the *Welſh* call **Cwmmwd**, and ſignifies *Provincia, Regio, Cohabitantia*, and conſiſted of *twelve Mannours* or *Circuits*, and two *Townſhips*; there were four *Townſhips* to every *Circuit* or *Mannour*, and every *Townſhip* comprehended four *Gavels*, every *Gavel* had four **Rhandirs**, and four *Tenements* were conſtituted under every **Rhandir**. Of **Gavel**, I have told you before that it ſignifies *Tenura* (a *Tenure*) **Rhandir** is a word that admits not of any proper Signficancy in our *Engliſh ſpeech*, but is by *Doctor Davies* rendred *Pars aut Sors hæreditaria*, from the Verb **Rhannu**, *Partiri, diſtribuere*. Theſe diviſions were ſet out by him, as it were into a proper and peaceable *Conveyance* and *Conduit-pipe*, for the Lands of his Principality which were lyable to this *Partition*: ſo that we find in every *Townſhip* four *Gavels*, which were *four* great *Holds* or *Tenures*; out of which I cannot find the *Prince* had any Rent, for that the *Gentry* held their Lands very free from any baſe ſervice, only ſubjected to their *Military policy and proviſion*; the Prince his own maintenance, (that ſo he might be obliged to a reſpect and care of every particular in his Principality) was ſet out in every **Cwmmwd** or *Commot*, which (as I ſaid before) conſiſted of *twelve Mannors* or *Circuits, and two Townſhips*, which *two Townſhips* were belonging to the *Prince*, thorough out each *Commot* in the *Principality* of *Wales*; for in the perſon of this *Howel* the *Territories* of

North-

North-wales and *South-wales* were united, as himself in the * *Proœmium* of his Laws doth declare. This *Gavel* in the description aforesaid, seems to be a large apportionment of Land belonging to a * **Pen-cennedl**, or chief of a Family or *Clan*, and doth *per eminentiam* signifie *the Tenure*, that is to say, their **Gavel**; this being only (or at the least most notably) known by them: So that every **Pen-cennedl** in his **Gavel**, having four **Rhandirs**, that is, *fortes or partes Hereditariæ*, ready divided and apportioned for his **Cennedl** or *Generation*; and not only so, but also a sub-division of many Tenements under the **Rhandirs**: shews perfectly a **Gavel**, *Tenure* or *Hold*, exactly observed even in their general partition of Lands: and this so antient (at least) as the time when *Howel-Dda* collected these Laws, which was about the year of our Lord 942. so that the true genuine Signification of all is, *Tot partes Hereditariæ in Tenura*; that is, each *Gavel* or *Tenure* did consist of so many **Rhandirs**, or Hereditary divisions ready parted; each of these Tenures being supposed to be so ordered, as to admit of a *Division*, and if need were of Sub-divisions also; that so a *Township* might the more aptly be constituted for the execution of this common *Tenure*; and these so holding in, or rather by their **Gavel**, were not only the antient *Villani* or *Villani* among the *Brytains*, but also the *Gentry Lords* and *Prince* himself were subject to it. The use of the word (viz. **Gavel**) to a proper *Signification* I have shew'd, and that also *Extra Cantium*, to which *County* Mr. S. doth labour to Monopolize

* M S. *Penes Authorem.*

* Which by the *Irish* are called Canfinity's, and are the chief of their *Gavels* or *Rhin-taloon*. See *Davies* his *Irish* reports.

polize it, and the use thereof for several hundreds of years past, even at such a time, when the Correspondency (in probability) betwixt the *Brytains* and *Saxons* was so small, and the *Odium* so great, in respect of the unforgotten intrusion of the last; that in that continued state of Warr, it was not probable they would have accepted of any *Saxon Customs*, by a name so insignificant to the thing, (as anciently the *Etymology* of it was received) or so little to the matter, (as Mr. *S*'s novel Exposition would render it) or to the rational use thereof. But I have already shewn in the fore-going Discourse, in what sense the *Brytains* have received it, and also what *Doctor Davies* in his *Cambro-British Dictionary*, (which in my judgment is an Elaborate and Critical piece) hath said and exemplified thereupon; for he it is, that not only affirms Gafaelu (by English Letters pronounced *Gavaily*) to signifie *Tenere*, to hold, as before I have said; But also Gafael (by *English* Letters spoken *Gavel*, the word in Controversie) to be *Tenura*, a *hold*. But for the *Statutum Walliæ* wich Mr. *S*. discourseth of, wherein he affirms that the *term Gavelkind* is not to be found, though the *Custom* of *partition* is therein mentioned, which without any great trouble (all things considered) might argue it to be a *British custom*, yet confesses that the *Parliament* in the *Statute* of 34 *Hen*. 8. cap. 26. did make use of the word *Gavelkind*. *But, how?* (saith he "questioning, and then resolving it) *only as borrowed,* "*to help to Describe and Illustrate that partible quality of* "*the Lands in Wales, therein mentioned; and that it* "*was transmitted by our Lawyers, who borrowed the term* "*to make use of it for Illustration sake*; But (with pardon)

don) I shall hence infer, that it passed there, as a most natural and genuine Expression, and is properly a peculiar of their own, upon the grounds before set down. As for the antient *Customs* of the *Kingdome* of *Ireland*, I have little to say, except it be, that when *King John* overthrew the *Brehon Law*, *Anno Regni sui* 12. and then setled the *English Laws*; that this *Tenure* of *partition* might probably receive a great abatement of its common usage and force among them, who it seems have the foot-steps and remainders thereof very Visible unto these our days. But in this I shall desire to be excus'd, as not having informed my self sufficiently, so as to make a satisfactory Discourse thereof; confessing my self much ignorant in that History, and shall proceed in the Discourse

I am informed by the *Irish*, that their *Rheim-ta-loon*, which is their parting of Land, is generally among the Comminalty, and is like that of the Country of *Flanders*, where *Daughters* share as well as the *Sons*, and spreads all over that Country also; the like to which I shall shew you in *Wareham* in *Dorsetshire*, in the next Chapter. *Rheim* in the *Irish* is to part, and I believe comes from the *British* Rhannu.

CHAP. VII.

Of forlend Customs of Descent of Lands; of the Welsh Lims of Partition; of Knights service and wardship among them.

STill it is that Mr. *S.* goes about to confine the Knowledge of *Gavelkind* to the Circuit of *Kent*, and will not allow it *Gavelkind* in any other *Country* "but that: For in *pag.* 49. he saith thus; *what, elsewhere, I mean in other Shires and Counties they properly*

"*call by the name of Socage, whether free or base, we here*
"*in Kent are wont to call by the name of Gavelkind, or if*
"*you please (in Mr.* Lambards *expression) all Socage-*
"*service here properly so called, is cloathed with the ap-*
"*parel of Gavelkind, and under it in a large acception,*
"*is understood all such Land within the County, as is not*
"*Knights-fee or Knights-service-Land; the term serving*
"*here to Contra-distinguish it from Knights-service-*
"*Land.* But let a man go into *Urchinfield* in the *County* of *Hereford*, and inquire of an Inhabitant there-of, in what manner Lands there are held; he will readily and speedily resolve him, that they are subject to *Gavelkind*; and as fully inform you of the nature of that their Tenure, viz. that by it, their Lands are all partible among the *Males*; (and in defect of them, among the *Females*, as other Lands of Inheritance are throughout *England*.) I have met with another *kind* and *sort* of *Partition*, which I dare venture to call *Gavelkind*, and is very unusual; because by the Custom of the place, both *Males* and *Females* have a right equally in the Partition. I think it may not prove displeasing to insert the *Record*, as it was shewn to me by my *Industrious* friend Mr. *Falconbridge*, to whom, for this and many others favours, I must acknowledge my self with much gratefulness Indebted; and thus it is in the Office of the *Chamberlains* of the *Exchequer* of *Receipt*; being the like as I find it in *Flanders*, and the same with that in *Ireland*.

Dorset.

Dorſet.

Placita de juratis & Aſſiſ. Anno 16. Edw. 1.
Metingh.

Edwardus Kaynel. Maria filia Roberti de Camma. Johannes Bereſet, & Matill. uxor ejus, & Johanna ſoror ejuſdem Matill. petunt verſus Johannem Alfrish de Warham unum Toftum cum pertinentiis in Warham: de quo Johannes Gerard. conſanguineus predictorum Edwardi, Mariæ, Matill. & Johannæ cujus heredes ipſi ſunt, fuit ſeiſitus in Dominico ſuo ut de feodo die quo obiit, &c. unde dicunt, &c.

The Iriſh have the ſame manner of Partition. *Davies* Iriſh reports.

Et Johannes venit & dicit quod Tenementa in Warham ſunt partibilia inter Maſculos & Femellas; & dicit quod predictus Edwardus habet quaſdam Gunnoram, Matill. Chriſtianam, Albredam & Eufemiam ſorores & participes ipſius Edwardi & aliorum petentium; & que tantum jus habent in re petita ſicut, &c. & que non nominantur in Brevi; unde petit judicium de Brevi, &c. & Edwardus & alii non poſſunt hoc dedicere: Ideo conſideratum eſt quod predictus Johannes eat inde ſine die, &c. This though it may ſeem ſtrange, yet may properly enough be called a *Gavelkind*: for let the Cuſtom of any place be according to the uſual or unuſual way of *Partition*, it is but the *Tenure* of that place, and will come well enough under that Denomination; and that which Mr. *S.* brings in his 49th. page, as a Solution to an Objection, viz. *That it is no other than a Cuſtom generally ſpreading it ſelf throughout the whole Country in Land of that nature*; ſhould have been thus laid down,

down, (without confining it to the *County* of *Kent*) viz. throughout any *Country* or all *Countries* in *Land* of that nature, for ſo indeed it is. In the Villages round the *City* of *Hereford*, I find their Lands are all held in the *Tenure* of *Borough-Engliſh*; where (without difficulty I conclude that,) it is a Cuſtom ſpreading it ſelf throughout thoſe Pariſhes and Villages in Land of that nature; neither can it be otherwiſe but that the youngeſt Son ought to be, and muſt by Law be found Heir, ſo long as that Land remains under the ſame Services and Copy-holdings of their reſpective *Mannours*; and the *Suters* here do as much ſtand upon their *Cuſtoms*, as in *Urchenfield* they inſiſt upon their *Cuſtom* of *Partition* among the *Males*, or as *Wareham* in *Dorſetſhire* among both *Males* and *Females*: another ſort of uſage in the *Tenure* of *Burgh-Engliſh*, is mentioned by Sir *Edward Coke*, upon * *Littleton*, in theſe words; *within the Mannour of B. in the County of Berk, there is ſuch a Cuſtom, that if a Man have divers Daughters, and no Son, and Dyeth, the eldeſt Daughter ſhall only Inherit; and if he have no Daughters, but Siſters, the eldeſt Siſter by the Cuſtom ſhall Inherit, and ſometime the youngeſt; and divers other Cuſtoms there be in like Caſes.* And brings in *Britton* to ſtrengthen him, (and to confirm what I have ſaid) ſaying *De terres des anciennes domeynes ſoit uſe ſolonque le antient uſage del lieu, dount en aſcun lieu le heire pur uſage, que le heritage ſoit departable, entre touts les enfants freres & ſores, & in aſcun lieu que le eigne avera tout, & in aſcun lieu que le puiſne frere avera tout.* Here you ſee ſeve-

Item, *Lou, per Cuſtome appel. Burgh-Engliſh en aſcun Burgh, le fits puiſn inherita touts les Tenements, &c.* Littleton, Lib. 2. Sect. 211.

* Lib. 2. Cap. 11. Sect. 211.

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ral usages, and the like with the usage of *Warham*, and all according to the usage of the place; which is their *Gavel* or *Tenure*. But to return to that which is commonly received for *Gavelkind*, which is a Partition among all the *Males*, notwithstanding the existency of Females; of which sort there are also many kinds, some that consider the *Elder*, as that in *Urchenfield*; others that have a greater respect to the *Younger*, as that in *Wales*; some sort more *free*, other sort more *servile*; yet in *Wales* it was all called *per eminentiam Gavel*, as being the *common Tenure* there; and indeed, by my search among their Laws, I could not perceive that they had any other. And here I shall recite to you several Laws of *Howel-dda*, one whereof inferrs *Knights-service*, another *Wardship*, and all of them their *Gavel*, under the *Community* of *Partition*. The first is this, *Si quis habuit plures filios, & aliqui eorum vel omnes praeter unum mortui fuerint, ille unus hereditatem omnem habebit, si potuerit pro hereditate sua Domino respondere*: Here by Law care is taken, that in case all the Sons should Dye, except one, then that that one ought to enjoy the whole Inheritance, to which certainly he had no right, (that is as to the whole) had the other Sons lived; and the Law is so general, that it referrs not especially to the *Eldest*, or to the *Youngest*, but to any of the Sons, who all alike had the same interest and propriety. Nevertheless, this privilege is under a *Condition*; and that is, *Si potuerit pro hereditate sua Domino respondere*; this answering to the Lord, is a comprehensive term of a *Military duty*, and all other received *Exits* of the Land; and in those Laws, is the usual expression whereby both *Military* services and

Ex leg. Howeli Boni MS. penes Authorem.

Mailes

Mailes are understood. The Law for Wardship is this. *Si terram hereditatis sue aliqua Parentela* (*id est*) Guelly-gord *inter se non diviserit, quamvis omnibus aliis defunctis; non nisi unus unius superstit, ipse terram habebit: at si de Terra illa utpote deficiens, jura sua Regi prestare non poterit; Rex terram possidebit, donec ille sufficienter pro Terra possit respondere*: In this Law is not only an expres of the *Tenure* of *partition*, but also the service due to the *King* from the Land, and a Title of *Wardship* to the *King* untill the service by the proprietor can be sufficiently performed. And although M^r. *Campden* treating of the Court of Wards, saith, *veteri enim instituto è Normannia deducto, & non ab Henrico tertio*; yet this shews the *Britains* had it before the *Norman Conquest*, & that our Policy was not wholly derived from beyond the Seas, (to make out which, many writers are very fond) but that antiently our *Britains* had that wisdom in themselves, and such Politique Customs among themselves, that shew the little need they had of borrowing from others; and I believe this is as antient an expres of *Wardships* as may be found; certain I am, it is the *antientest* I have met with; and notwithstanding the *Britains* had it amongst them before their acquaintance with the *Normans*: yet that which M^r. *Campden* writes may be true, if he means only the *Courts of Wards*; but the *Tenure* by *Wardship* enjoyes that antiquity I before have shewed. But a little to consider the form and manner us'd in the compositure of these *Welsh* Laws, I observe, that frequently it occurrs among them, that the expression of the *significatum* in the *Latine* is explained by the *British Term*, and was not in those times, (as some may imagine) an *ignotum per ignotius*; but a ready and prompt

prompt way to make the Laws facile and eaſie to the underſtanding of the concerned Subjects. *Aliqua parentela*, doth not ſo fully explain the deſign of the Law, as it is, with (*id eſt* Gwelygordd) which word turned into *Latine* ſignifies *ex amore lecti aut concubitus*; and is derived from gwely, *lectus & cubile*, and gordd, *Malleus, itis, &c. the mawl of the bedde*; or *the effect of beddmalleating*; an expreſſion uſed by the *Brytains* to difference ſuch Children as were *legitimate*, born in the true bedd of *Wedlock*; from *illegitimate*, or ſuch as were born in *baſtardy*; yet for theſe, there was a proviſion in the Laws, but that was *ex patris benevolentia*; here, in this Law the Title of partition is made out; yet ſo that in all caſes the Land muſt not be of neceſſity ſubject unto it; for if the Legitimate Children have not divided the Lands; and it ſhould chance that all of them dye except one, that one ſhall have all the Land; upon that condition before ſpoken of. But in caſe that the Land be divided among the Sons; and after this diviſion one of them dye; what ſhall become of his part and apportionment? This objection is ſolved by another of their Laws; which that it may not want any thing to the full explanation thereof, I will beſtow the tranſcribing of it, the rather becauſe in all parts it confirms the *Britiſh Tenure*, or Gavel, and is this: *Si aliqua progenies inter ſe diviſerit hereditatem; & poſt aliqui eorum defecerint; pars eorum in manu Regis cadet; quia alii partes ſuas ſecundum diviſionis rationem habuerint*; here it is provided that the *Progenies* muſt *inter ſe hereditatem dividere*; and then if any portioners dye after the partition, the part or portion of the deceaſed Eſcheats to the *King*; and the reaſon and ground thereof is there rendred;

Quia alii partes ſuas ſecundum diviſionis rationem habuerunt; becauſe that each one had his ſhare or apportionment according to the Rule or Law of dividing or parting. But becauſe M^r. *S.* doth write of the great privileges belonging to *Kent* by this Tenure, I ſhall make in the following Chapter

CHAP. VIII.

A Competition of Privileges betwixt Kent *and* Urchenfield.

MUch of my enquiry hath, in theſe laſt Chapters, been ſpent about the ſingularity of the *Tenure* of *Gavelkind* in *Kent*. I now proceed to ſhew a competition in privileges betwixt other places ſubjected to "this *Tenure*, and *Kent*. For that M^r. *S.* ſaith in his "53. page, *Kentiſh Gavelkind conſiſts of many ſingular* "*properties*; *which may as well challenge a ſhare and right* "*in the cuſtomes name as may that of partition, ſuch as dow-*"*er of the Moyety*, *not to forfeit Lands for Felony*, *and the* "*like*. I believe not, either *partition*, or any of thoſe mentioned *privileges* have a ſhare or right in the name of the *Cuſtome*, (which I ſhall diſcourſe hereafter) nor that the ſingular properties of that Land in *Kent*, comes near to that in *Urchenfield*.* I grant they are the ſame in caſe of Felony, for I find it Recorded, *Rob. Bonehatch* was hanged for Felony; the Sheriff of *Kent* ſeizes on his Land in *Chertham*, held of the Archbiſhop in *Gavelkind*; the King writes thus to the then Sheriff, *Quod Reginaldus Dyke nuper Vic. com. predicti habuit inde annum*,

* *Kanc. Rot. Tur. Lond. Clauſ. 8. Rich. 2. m. 2.*

nem, diem & vaſtum: non obſtante quod ex antiqua conſuetudine approbata, uſitata & allocata de Ten. que ſic tenentur ſecundum conſuetudinem de Gavelkind: *in hoc caſu nos habere non deberemus annum, diem neque vaſtum; nec capitales domini inde eſcaetam, ſet proximi heredes ſic convictorum & ſuſpenſorum hæreditatem ſuam immediate conſequuntur, felonia illa non obſtante*; this is the right of both, and of all *Wales*. I will not here compare the extent of the two *Regions* together; but yet a ſmall matter would perſwade me to believe, that at this inſtant day, there is as much Land ſubject to *Gavelkind* in *Urchenfield* as there is in *Kent*. And here firſt let us obſerve that the Land that is thus *partible*, cannot be held or received to *contra-diſtinguiſh* it from *Knights-ſervice-Land*; for if it be not held by all or moſt of thoſe tyes and bonds by which *Knight-ſervice-Land* is inveſted; it muſt then hold by ſome other *ſervile* or *baſer Tenures*; Therefore the *honourable ſervices* of the Lands in *Urchenfield* by their *Tenure* are in groſs Recorded in *Domeſdey* book thus. **In Arcenefelde habet Rex C. homines IV. minus, qui habent LXXIII. car. cum ſuis hominibus; & dant de conſuetudine XLI. Sextarios Mellis, & XX. ſolid. pro ovibus quas ſolebant dare, & X. ſolid. pro fumagio. nec dant geldam, aut aliam conſuetudinem, niſi quod pergunt in exercitu Regis ſi juſſum eis fuerit.** Theſe Ninety ſix men here ſpoken of I reckon them to be *liberi homines*; yet ſuch as held in *Gavelkind*; and the ſeventy and three Ploughs with their men, I look upon them to

Domeſd. penes Cam. Scacii.

be their *villani*; and both *liberi* & *villani* to hold their Lands in *Gavelkind*; for that I find all their Lands in that *Territory* which consists of *two hundreds*, are so held to this day. You find them free from payments and Customes antiently imposed upon the rest of the Nation, because as a special remarque it is said, *nec dant geldam aut aliam consuetudinem*, unless it be to march in the *Kings Army* when they are commanded; yet paying (as the rest of *Wales* doth) their Talu-fuch, and Talu-ffurn; this last being the *fumagium* there Recorded, and is a *payment* for *fire*; whether *Peter-pence* or no, I am not certain; but incline to the negative: because it is paid still to *Lords* of *Mannors* generally over *Wales* to this day. But to cleer the distinction that I made just now of *Freemen* and *Villains* in *Urchenfield*, that so I may not seem to speak without book, I gathered it out of the same Record; which in the next Paragraph gives a further account in these words: *Si liber homo ibi moritur, Rex habet caballum ejus cum armis: de Villano cum moritur habet Rex unum bovem.* The first seems to me to be *Relief* from those that held by *Knights-service*; because his Horse and Armes when he dyed did belong to the *King*; the second to be *Heriot*; both which were antient *British* customes; as you may perceive by the conclusion of all the Customes. These men had the Chief Honour in the *Army* given to them; for *cum Exercitus in hostem pergit, ipsi per consuetudinem faciunt Avauntwarde, & reverstone Redreward*; they did lead the *Vann* to fight, and *out* of the field brought up the *Rear*. These honours were not the least in those dayes I assure you, no more than in our age: I say, these men enjoyed these and many other privileges with

Domesd.

Domesd.

with their *Gavelkind*, unto this preſent day; which being all compared with the Laws of *Howel-dha* ſeem to be the ſame with them, as for ſatisfaction for *murder*, for *burning of houſes*; &c. all certified in *Domeſday*, with this additional *Paragraph* in the concluſion. **Hæ conſuetudines erant Walenſium tempore Regis Eduuardi in Arcenefeld.** I know not what could have been ſaid more pertinent, they have ſtill this Tenure of *Gavelkind*, and they have thoſe other *enumerated Cuſtomes*, derived to them from great Antiquity, (before the *Norman Conqueſt*) which are all certified to have been **Conſuetudines Walenſium Tempore Regis Edwardi**; and this by the *convictum eſt* of this *Record*; ſo that it ſeems plain that this *Cuſtome* of *partition* among the reſt was devolved over to them as a *Welſh cuſtome*; which by the Laws of *Howel-dha*, I find was ſo *paramount*, that unto it, as to the *Center*, all other proviſionary Laws, found among them, do point and have reference; and not probable to be here planted by imitation of any other forein nation or people. But to return again to the competition; this *Region*, * for ſo in antient writings it is called, hath not only the like privileges in reſpect of *Dower* of the *Moyety*; and no *forfeiture* of *Lands* for *felony*; but alſo this; that, *ibi non currit Breve Regis*; and in the *Cuſtody* of the *Chamberlains* of the *Exchequer* of *Receipt* there is a *Plea* thus inrolled, *In Placitis coram Rege.*

* *Regio de Arcenefeld.*

Paſch. Anno 9. *Majus Edw.* 1. *Heref.* 32.

Homines Hundredi de Irchinfeld à tempore quo non extat memoria, placitaverunt, & placita ſua habuerunt de omnibus placitis que ad coronam pertinent: Sive de Appellis.

lis ſive de tranſgreſſionibus contra pacem Regis, ſolummodo coram Vice-comite Heref. & non coram aliquibus aliis juſticiaris: this was exhibited in reference to ſome appeal made in derogation of the power of *Irchenfeld* to the *Juſtices Itinerant*, but upon hearing it was adjudged thus; *Ideo Appellum remittitur in Hundredo predicto*; it was it ſeems then called a *Hundred*, but in ſeveral other pleadings it is called *Libertas de Irchenfeld*; and in caſe of *Appeales*, or any thing elſe that was impleaded out of the *Liberty*, I find that the *Ballivus Libertatis de Irchinfeld* came thither, and oftentimes claimed thoſe Liberties; which were all ordered unto him, (that ever I yet could meet with) for the uſe of the Liberty. They have within that *Circuit*, a *Liberty* to Arreſt for any Sum of money whatſoever. That whoever purchaſes Lands there may bequeath them to whom he pleaſeth, as that of the 20 *Edw.* 1. between the *Nephews* of *Philip de Martineſtow* and *Glodithã fil. Mauricii fil. Waſmaeri*; which ſaid *Gloditha* pleads, *quod unuſquiſque qui terrãm habet infra Hundr. de Irchenefeld de perquiſito ſuo poteſt illud perquiſitum legare cuicunque voluerit tenementum, &c. Tenementum illud legatum fuit pred. Glodithe. Unde dicunt quod Breve iſtud non currit infra Hundred. pred.* To this, *Jurati dicunt ſuper Sacram. ſuum quod predicta Tenementa ſunt legabilia; & quod predict. Philippus Tenementa illa legavit predicte Glodithe; & quod Breve iſtud non currit infra Hundred. predict. Ideo Glodithe conceſſum eſt inde ſine die.* They have a formal way of *Judgment* of their own, much after the *Britiſh faſhion*: The Steward with his Officers belonging to the Court being ſeated; there be certain *Chiefs* among them, whoſe Houſes and Lands

In Rot. 20 Ed. 1. *penes Camer. Sccii Recept.*

are

are held of the Lord by *Sute* and *Doome* in the Court of that liberty, and hereupon are called *Doomeſ-men*, that is to ſay, *men of Judgment*; or ſuch who judge of matters in *Controverſie*. Therefore in the *Quo warranto* roll of *Irchenfield* in the 20 *Edward* 1. it is Recorded, that *Jurati Hund. de Irchenefeud, Webbetre & Greytr. dicunt, quod Botholin qui tenuit villam de Comboglin ſolebat facere Sectam ad Hundr. predict. & eſſe unus Domeſman de eodem Hundr. &c.* and in other Collections of Antiquity that I have tranſcribed, there is one Record that is Intituled *de libertate de Domeſman*. But becauſe my intentions are to be more large upon this *Theme*, in a Tract more proper, I ſhall wave it at this preſent; only among other duties reckoned up in *Domeſday* this is one (that I had almoſt forgot,) to carry the *Kings Meſſages* into *Wales*, and to Pray for him in three Churches every week; and in another Record, which is *inſtar omnium*, and by it they as it were were left to their own Liberty, and are ſaid to be *extra Comitatum*; not bound up to any ſtrictneſs by the Countrey Laws. Which how farr tranſcending the *Kentiſh privileges*, I leave to any to judge. Now if *Dower* of the *Moiety*, and not to *forfeit* Lands for *Felony*, be the greateſt privileges *Kent* hath by the *Tenure* of *Gavelkind*; then are the privileges of other places where the uſe of *Gavelkind* is not at this preſent, far greater: as in ſome ſpecial privileged *Hundreds* and *Precincts*, &c. in the diſcourſe of which it will be beſides the matter in hand to engage. I proceed to the diſcourſe of

Rot. quo. War. ibidem.

CHAP.

CHAP. IX.

Several ſorts of Gavel not relating to the Tenure anſwered as urged by Mr. S. How that Gavel was underſtood; by our late Lawyers; How in Domeſday by comparing places together, and how among the Saxons; a Diſcourſe upon the Writ called Gavelet.

MR. *S.* In his tenth page writes that the word *Gavel*, as to the main part of it, frequently occurrs in the old Records of ſome Mannours out of *Kent*, ſometimes ſimply, but for the moſt part in compoſition; for example in *Gavel-erth*, *Gavelate*, *Gavel-lond*, &c. I make not a Citation of theſe words, as if I intended to put a force upon them, as ſome at the firſt reading may imagine, becauſe Mr. *S.* averrs that the word *Gavel* doth occurr in ſome old *Records* of *Mannours* out of *Kent*; which I take not, as there mentioned in *compoſition* to have any relation to the Tenure of *Partition*; for that which is applied in thoſe compoſitions for ſeveral uſes, as in *For-gavel*, *Mete-gavel*, *Gavel-rip*, *Swine-gavel*, *Werk-gavel*, *Hunig-gavel*, *&c.* is little to our purpoſe. Several ſuch I have met withall, and divers different from what Mr. *S.* hath reckoned. I have encountred with a *Pride-gavel*; which in the *Lordſhip* of *Rodely* in the *County* of *Glouceſter* is uſed and paid unto this day, as a *Rent* to the Lord of the *Mannour*, by certain Tenants; in

in duty and acknowledgment to him for their Liberty and Privilege of *Fiſhing* in the *River Severn* for *Lampreyes*; and in the ſame *Lordſhip* is alſo another called *Sand-gavel*, which is nothing elſe but a *Payment* due to the *Lord*, for liberty granted to the Tenents to Digg up *Sand* for their uſes. Many ſuch the *Reader* might be furniſhed withall, did I conceive they would redound in any meaſure to our diſcourſe; for my judgment is, that this *Gavel* in theſe Compoſitions, and *Gavel* in the Tenure, are very different in their acceptations, as I ſhall ſhew anon. But to examine Mr. *S*'s Collections and Obſervations concerning theſe compounded *Gavels*; where in his *Paragraph* of *Oate-gavel* (in pag. 21.) he declares this was a certain proportion of *Rent-oates* ſerved into the *Lord*, ſometimes in *Kind*, and other while, by *compoſition redeemed with Money*; and out of *South-Malling Cuſtumal* urgeth this, *quod omnes operarii debent reddere annuatim quod dicitur Gavel-otte in* xl^{ma}. (i. e. in *Quadrageſima*) and in another accompt roll of the ſame mannor, it is ſaid concerning a certain Tenant, that, *reſpondet de Octo quarteriis, &c. receptis de Gabulo Cuſtumariorum, &c.* and again, *de Avena de Gablo vendita* iii^{s}. and x^{s}. vi^{d}. *de quinque quarteriis, &c. de Gavel-ote de redditu venditis.* This charge of ten ſhillings ſix pence upon five quarters, &c. ſold, *de Gavel-ote de redditu*, I gueſs it to be nothing elſe, but an *Impoſition*, an *Exciſe*, or an *Aſſeſs*; (which is the proper ſignification of the word *Gablum* or *Gabulum*) and ſo to be underſtood: as the *Exciſe* or *Aſſeſs* upon the *Corn* ſold by the *Tenants*, when for Rent they ſhould have paid *Oats* in kind. Which receives a little explanation by the precedent accompt; where it is

ſaid, that *reſpondet de octo quarteriis, &c. receptis de Gabulo Conſuetudinariorum*; and again, iii^s. *de Gablo de Avena vendita*: the *Exciſe* or *Aſſeſs* upon the *Cuſtomary Tenants* for viii *quarters ſold*, and the iii^s. to be underſtood in the like manner, that is, an *Impoſition* or *Exciſe* for *Oats* ſold. Certainly *Gablum* or *Gabulum* is not a word ſo much out of uſe, that we had need to grope, or were forced to ſearch after it, as it were in the Dark; for even in theſe our days with eaſe we may produce the uſe of it; bearing the ſame Signification as I have now given to it; to the ſame purpoſe and ſenſe do I find it us'd in that prodigious inſurrection at *Naples*, within theſe few years under *Maſſaniello* a Fiſher-man; where the Story tranſlated (in this point I may ſay *Literatim*) gives the ground of it to be a certain Payment or Exciſe upon Fiſh, which the *Italians* call *Gabelli*; and we have tranſmitted unto us in the Tranſlation, *Gabells*; known in *Spain* by the term * *Alcabala* or *Alcavala*, which as *Minſhew* doth expound it, is, *Datio, Redditus, Cenſus, Tributum, Vectigal, Portorium*; and in Engliſh is rendred, an *Impoſt, Cuſtom, Tax, Toll or Tribute*; and from our uſe of it is called *Gabell, Gabella, Gablum*. He addeth, that it comes of the *French* word *Gabelle*, that is, *Vectigal*, and hath the ſame Signification among our Old Writers, as *Gabelle* hath in the *French*; and then concludes, *Gabella, as Caſſan. defineth it, de conſuet. Burg.*

* *Martinus Zeillerus* in his *Itinerarium Hiſpaniæ* out of *Mariana*, lib. 26. cap. 9. and lib. 17 cap. 8. *Et Hugo Linſchoten*, ſaith, *Anno* 1341. *Introductum eſt vectigal Hiſpanis, i. e. Alcavala & Italis Gabella dictum, quod aliquoties poſtea auctum fuit. Ejus vi coguntur ſubditi decimas pendere, quoticſcunque merces, bona, prædia, ædes & agri venduntur. Eidem obnoxii ſunt cujuſcunque generis opifices, ut ſutores, ſartores, lanii, & quicunque officinas aperitas habent. Vinum quoque ſive uvæ colligantur, ſive ipſum in Regno divendatur, ſive in exteras regiones navibus deferatur, &c.* pag. 78.

Burg. f. 119. *est vectigal quod solvitur pro bonis Mobilibus; id est, pro iis quæ vehuntur; distinguishing it from Tributum*, for this reason, *quia Tributum est propriè quod fisco vel Principi solvatur pro rebus immobilibus:* and is the same which Mr. *S.* pag. 23. upon *Swine-gavel* doth cite, *Et de* viii^s. x^d. *de tribus porcis de gablo venditis*; in which place this *de Gablo* signifies *for Gables*, or *upon* the *accompt* of that *Imposition*; and certainly may without any force upon the word be rendred at large, as Mr. *S.* hath done it, *A Rent*: for *Rent* in Latin is, *Redditus*, which is, a *Payment made* or *given* for any thing whatever; and Sir *Edward Coke* upon *Littleton*, writing of *Rents*, saith, *That* L. 2. c. 12. *by some, Redditus dicitur à redeundo, quia retro it & quotannis reddit, &c. for reddendo inde, or reservando inde, or the like, is as much to say, as that the Tenant or Lessee, shall pay so much out of the profit of the Lands; for, reddere, nihil aliud est quam acceptum aut aliquam partem ejusdem restituere, seu reddere est, quasi retro dare; and hereof commeth redditus, for a Rent*; and adds this to it; *Here note* (saith he) *for the better understanding of antient Records, Statutes, Charters, &c. that* Gabell *or* Gavel, Gablum, Gabellum, Gabellettum, Galbellettum *and* Gavillettum, *do signifie a Rent, Custom, Duty or Service yielded or done to the King or any other Lord*; and then cites *Domesday book*, which he hath thus; **Wallingford continet Cclxxvi Hagas (*i. e.*) domos reddentes IX liberas de gablo (*i. e.*) de redditu.** The which I my self Transcribing out of the Original book, find it to be thus; In Burgo de *Wallingeford* habuit Rex *Edw.* Viii.

virgat. terre & in his erant 276. Hage reddentes XI. lib. de Gablo; ſo that *Liberas* ſhould be corrected and read *Libras*. The other difference betwixt the two Citations is only Sir *Edward Coke* his *Comment* or *Conſtruction* of it; but this it ſeems he takes for granted, that *Gablum* hath no other ſignification than *Rent*: for by the ſame *Record*, to be ſure that that *Rent* of xi^li. (not ix^li.) ſhould come into the *King's Coffers*, there is a Paragraph, that provides for it, where it is written, what and how the *Souldiers* that the *Burrow* ſhall find upon all occaſions for the *King*, ſhall be provided for, and is thus ordered; [*Conredium*] *Mercedem non de cenſu Regis ſed deſuo*; all the *Cens* or *Rent* that the *King* had, that I could find, is that *Gablum* of *eleven Pounds*; and this *Gablum* was not always paid in Money. For in *Sudſexe*, under the Title of the Lands of *William de Warene* in the ſame Record, is this, that Radulfus tenet de Willielmo (that is of *William* of *Warren*) Briſtelmeſtune. Brictric tenuit de dono Godwini Comitis T. R. E. in Dominio, &c. De *Gablo* IV. milia Alletium; and under the ſame Title it is there remembred; Pluntune, Hugo filius Ranulfi tenet de Willielmo, &c. ibi, &c. Silva de XX. porc. De gablo XVII. porc. But that *Gablum* did as well relate to *Money* as to other things in kind, either *Herrings* or *Swine*, is very plain by that *Record* in *Domeſdey book*, in *Windeſore* in *Berkſhire*, where it is ſaid, Rex Willielmus tenet Windeſores, in Dominio. Rex Edw. tenuit, ibi

XI. Lib. de Gablo, & qui ibi manebant faciebant ſervitium Regis cum equis vel per aquam uſque ad Blidbertiam, Reddinges, Sudtone Beſentone, & hoc facientibus dabat prepoſitus [conredium] mercedem non de Cenſu Regis ſed de ſuo. Ex Domeſd In Berrocheſcire.

XX

XX hide, &c. & adhuc ſunt in villa C. Hage V. minus; ex his ſunt XXVI. quiete de Gablo, & de aliis exeunt XXX. ſolid. And laſtly, (out of the ſame Book I ſtill write) in *Somerſetſhire* it is thus expreſſed under the Title of *Terra Regis*, which I deſire the Reader to obſerve; **Rex tenet Cedre** (I ſuppoſe it is that *Chedder* ſo famous for its *Cheeſe*) **Rex Edw. tenuit; nunquam Geldavit, nec ſcitur quot hide ſunt ibi, &c. in Dominio, &c. XX. Bord. cum XVII. car. & VII. Gablatores redd. XVII s.** Theſe ſeven *Gablatores* did pay for Rent 17 *Shillings*; and from their paying of *Rent* were termed *Gablatores*. To me it ſeems probable, that this *Gablum* is to be diſtinguiſhed from a *Rent* or *Payment* made upon *Contract* or *Bargain*; and have Relation to ſuch an one as was impoſed by the *Power* and *Will* of the *Lord*; and theſe different ſorts of Payments are paſſed in *Domeſdey book* under ſeveral expreſſions, according to the nature of them; where ſometimes it is written, that one *reddit* to ſuch an one ſo much, without any other addition; and this I believe is *Rent* upon *Agreement* and *Contract*. Another, *reddit de Conſuetudine* ſo much; and a third, *reddit de Gablo* ſo much; and if the *Oate-gavel*, and the *Werke-gavel*, be taken into this Obſervation, with all the reſt by Mr. *S.* mentioned, they will prove to be of the *Off-ſpring* of *Gablum*, and ſhould have rather been writ with a *B.* than a *V Conſonant*; which Tranſmigration is ſo familiar in our *Europæan* Languages, that nothing more frequently occurrs;

occurrs; and not only among theſe, but alſo in moſt of the *Oriental Languages*, where the *Beth* or *B Maſculine* doth paſs after the ſame effeminate manner into *V.* eſpecially where in the *Hebrew* and *Chaldaick* there is to be found the difference, by the interpoſition of the *Dageſch* or *Prick* in the Letter, without which it is ſounded as an Aſpirate; and ſo likewiſe is the *F.* familiarly turned again into *V Conſonant*; as it falls out in moſt Languages, eſpecially in the *Britiſh*. But to return to this word *Gavel*, which if it ſhall receive a common acceptation, and thar according to what Mr. *S.* hath rendred it, which he labours to make out to be the chief *Acme* of his deſign, and all is, to have it ſignifie a *Rent* or *Impoſition*, in which we are agreed; but then in this we differ and diſſent, that there ought not to be allowed to it any relation to the Tenure of Partition, (which is my opinion) and which Mr. *S.* will hardly admit. But to run over ſome more of his *Gavles*. That which he diſcourſes of in his 30th. page is a *For-gavel*, which is rightly rendred *foris Gabulum*, and is defined to be *quaſi extra* (*vel præter*) *Gabulum quod Domino capitali debetur*: and this correſponds with what before I have ſaid, that it was a *Rent* or a *Duty*, *beſides*, *over and above*, or *beyond* the Original *contract* or *bargain*. The like is in *Mete-gavel*, which is *Cibi Gablum*, a *Rent* of *meat* or *food*; *Swine-gavel*, which is *porcorum Gablum*, a *Rent* of *Swine*. *Werke-gavel*, and *Werke-gabulum*, which is *operis Gablum*. *Hunig-gavel*, which is *Gabulum mellis*, * *Rent Honey*;

* For before that Sugar was from the *Indies* brought among us, the uſe of Honey was frequent inſtead thereof: So that I have obſerv'd in ſome very antient Rentals, as great a proportion of Honey as there would be required of Sugar to ſerve ſuch a Family; and much reſerved to the King in moſt Counties, as appears by *Domſday*.

of

of which sort in *Domesdey* you may find much; and in the 60. Law of *King Ina*, we find a bere-gafol, which is a *Rent* of *Beer* or rather *Barley*, as Mr. *Lambard* expoundeth it. For in some Countries of *England*, and in *Scotland*, they to this day call *Barley*, *Beer*. There is also in the 66. of *King Ina's* Laws to ræde gafole, (speaking of a yard of Land) which Mr. *Lambard* renders to signifie *Mercede conductam*, that is *hired* for *Rent* or *Wages*: So is it in the *Covenants* betwixt *King Alured* and *Guthrun* the *Dane*, In the second Article, where it is said, butan ðæm cæorle de on gafollande þit, which Mr. *Lambard* renders thus: *Siquidem is Rusticus censum annuum impendens non fuerit*, which I think in *English* is, provided, that *that Country-man* doth not sit on *Rented Land*: for *But* in the old *English*, as well as to this day in the present *Scotch*, signifies, *without*, or *wanting*, &c. There I find gafollande is turned into *Census*; which is as much as I have need to make use of, or take notice of. In the Laws of *King Æthelstan* it is thus, pealiþ monnæþ, &c. þ he ðam cyng gafol-gyldan mæg, which is thus Translated; *Wallus si in eas opes creverit, &c. ut annuum Regi censum pendat*; which is, if a *Welsh-man* increaseth so in *Riches*, &c. that he can or might yield a yearly *Rent* to the *King*: Such a one perhaps as we call a *Subsidy man*, or a *Man* in the *King's Books*. So in the sixth of *King Ina's Laws*, Gif hra feohta on gefol-gyldan hus, which is, if any one *Fights* in the *House* of one that *payes Rent*; and in the 22. of the same *King*, that so often recited Law; pealh gafolgylda hund tpelftig scill, which is turned into *Latin*, thus; *Wallus censum pendens annuum, &c.* in the same sense is

Mr. S. pag. 33.

is the word *Gavel-man* cited by * Mr. *S.* which hath no more in signification than one that *payes* a *Rent*; and relates not at all to the *Tenure*; and I believe if seriously looked into, that many of these compounds, who have this similitude of sounds, do not hold under, or by the *Tenure* of *partition*; which if so, here were *nomen sine re*; and this last may be a *Term* as significant for any one that payes a *rent* in *Cumberland*, as in *Kent*. In this recited page it is, that Mr. *S.* hath rightly fixed his *Gavel*; *for* (saith he) *one thing more I have to note before I leave* Gable, Gavel, &c. *that with* Mala *it signifies Rents, Services or Customs*; and in his 35th. page he addeth, *by this time the Reader is satisfied* (*I hope* saith he) *touching the true construction of* Gavel, Gafol, Gable, *or how ever else he shall chance to find it written, in each importing Cens*, (*i. e.*) *a Rent, either in Money, Provision or Works.* To conclude, I am of the same opinion with Mr. *S.* that these intermixtures and compounds do all hold a reference to ȝafol, *Gablum*, or *Gabulum*; that all of them have one and the same exposition; yet that none of them have any relation to the *Tenure* of *partition*, or to any other *Tenure* besides

* Many there are that with Mr. *Selden* account ȝafol to signifie several things, as *tributum, &c.* but not in the least with reference to the Tenure; he cites the *Annales Anglosaxoni In Bibliotheca Cottoniana*, *Anno* 1012. Ða þ ȝafol ȝelæſt þæ ⁊ fríð aþaſ aſporene þæſon þa to fende ſe here þiðe ſpa he ær ȝeȝaðeroðe þaſ. Ða buȝon to þam cýnȝe of þam here fif ⁊ feoþertiȝ ſcýpa. ⁊ him beheton þ hi ſoldon. þýſne eard healdan ⁊ he hi fedan ſceolde ⁊ ſcrýdon. *id est. Tributo soluto, & amicitiæ juramentis præstitis, exercitus, ut ante erat congregatus late dispergitur. Manebant vero cum Rege ex ipso exercitu quadraginta quinque naves ipsique fide datâ promiserunt se Terram hanc defensuros, modo eos aleret & vestiret Rex.* Danorum Rex tunc Swanus erat, quorum ita pepigit Ethelredus. Utrumque autem præstationis quam diximus genus Daneȝeld, Danegeldum seu Danageldum, id est, Tributum Danicum dicebatur. *Seld. Mar. claus.* l. 2. c. 11. Here we may observe that ȝeld is most properly Tribute, though in the former part of this Saxon citation, Mr. *Selden* renders ȝafol by *Tributum*, and properly it doth signifie a payment.

beſides the *Renting* or *paying* of a *Rent* for Land, &c. There is only one thing more left to be conſidered, which may ſeem to have in it ſome ſtrength; and that is in the 32. page of Mr. *S.* where he cites this, *& poſtea per quandam conſuetudinem quæ vocatur* Gavelate, *uſitatam in Comitatu iſto* (*viz. Kanc*) *de terris & tenementis de* Gavelkynde, *pro redditibus & ſervitiis quæ à retro fuerint de eiſdem; per plures annos; devenerunt eadem terra in manus cujuſdam Abbatis, &c.* Now this *conſuetudo de Gavelate* uſed in the *Lands* and *Tenements* held in *Gavelkind*, ſeems the one to have relation to the other; for Mr. *S.* in the beginning of that Paragraph tells us, that this *Gavelate* was not a *Rent* or a *Service*, but betoketh a *Rent* or a *Service with-hold*, *denied* or *detained*, cauſing the *Forfeiture* of the *Tenement* to the *Lord*; and whereas that Record ſaith, it was uſed in *that* County upon Lands and Tenements held in *Gavelkind*; Sir *Edward Coke* (as Mr. *S.* himſelf cites him) ſaith; *Gaveletum, is as much as to ſay, as to ceaſe or let to pay the Rent; Breve de Gavelleto in London, eſt Breve de ceſſavit in Biennium, &c. pro redditu ibidem, quia Tenementa fuerunt indiſtringibilia.* So that this *Brief* lay in *London* as well as *Kent*; and *Minſhew* in his *Dictionary* upon the word *Gavelet* exemplifies it by a Caſe: *That if any Tenant in Gavelkind, with-hold his Rent and his Services, of the Tenement which he holdeth of his Lord; let the Lord ſeek by the award of his Court from three weeks to three weeks, to find ſome diſtreſs upon the Tenements untill the fourth Court, alwayes with witneſſes; and if within that time, he can find no diſtreſs in that Tenement, whereby he may have Juſtice of his Tenant, then at the fourth Court,*

let it be awarded; that he shall take that Tenement into his hand in the name of a distress, as if it were an Ox or a Cow; and let him keep it a year and a day in his hand; without manuring it; within which term, if the Tenant come and pay his arrearages, and make reasonable amends for the withholding; then let him have and enjoy his Tenement as his Ancestors and he before held it; and if he do not come before the year and the day be past, then let the Lord goe to the next County Court, with his witnesses of his own Court, and pronounce there this process to have further witnesses, and by the award of his Court (after the County Court holden) he shall enter and manure in those Lands and Tenements as in his own; and if the Tenant come afterwards and will rehave his Tenements, and hold them as he did before, let him make agreement with the Lord; according as it is antiently said,

Nighesith yeld and Nighesith geld. (i. e.)	Let him nine times pay; and Nine times repay.

Hath he not since any thing given? nor hath he not since any thing paid? let him pay V. lib. *for his errour, before he become Tenant or Holder again. See hereof,* 10 *Hen.* 3. *Fitz. Cessavit.* 60. *& statute* 10. *Edw.* 2. *of Gavelet in London. In the Collection of Statutes London* 2. *matter much tending to this purpose; that by this word Gavelet, the Lord shall have the Land for the Censing if the Tenant.* I have read much to this purpose in Mr. *Lambards perambulation* of *Kent*; but the whole hereof, relates to a *writ* of *Recovery* for *default* or non-payment of *Gafol* or *Gable*, or *Rent*; the word *Gavelet* which is nothing but the *let*, *hindrance*

hindrance or *with-holding* of *Gavel*, *Gable* or *Rent*; which *Writ* runs in *London* as well as in *Kent*; and all of it, nothing to our *Tenure* in Question. To the same purpose is that which Mr. *S.* urgeth in his 12th. page; where he gives a Learned exposition; which serves for a fortification as well as an explanation upon the word *Gafol*; which he describes varied in the *Dialect*, being written, ȝafol, ȝavel, ȝaful, and ȝafel, and shews how it passes in *Matth.* 17. *vers.* 24, & 25. and *cap.* 22. *vers.* 17, & 19. to signifie *Tribute*; which I think may prove an acceptation thereof naturally enough; and in *Matth.* 25. *vers.* 27. it serveth to express *advantage* or *usury*; and in *King Withreds* Laws of Sr. *Henry Spelmans* Edition of his antient Councils, it is expounded to us, by what it is commonly received *Redditus vel pensio*; and Mr. *Selden* in his notes upon *Eadmerus*, renders ȝepunlic ȝaful, to signifie *Solitus census*; the wonted or usual *Payment* or *Rent*. But Mr. *S.* concludes thus. *To be short* (saith he) *Gafol is a word, which at Gablum in Domesdey book, the skilfull in the Saxon tongue (with Sir Henry Spelman else where) turn by what Gabella is expounded abroad, viz. vectigal, portorium, Tributum, exactio, census, &c. in Latine; but in English with Verstegan, Tribute, Tax or Custome; whereunto Mr. Lambard and Sir Edward Coke agree*; upon which and to all Mr. *S.* craves leave to add *Rent*, which I shall not in any wise deny him; provided, as I said before, he will be contented with that exposition to signifie *Rent*, and not go about for the sound sake to impose it on the *Tenure*; for in this I would begg an information, or rather satisfaction, whether *Gavelkind-land* may not be, and is not held without *Rent*? which if it be found to be, as I know it is generally

Testament. Saxonic.

used in *Berkenfield*, and perhaps in other places also, then doth it destroy the very nature of the *Etymologye*. But with this part, upon the mistake of the word *Gavel*, in those compounds mentioned, I have spoken sufficiently; and further I will not trouble the Readers patience about it. In the next place here are

CHAP. X.

Several Deeds cited by Mr. S. *that have their* Tenenda's ad Gavilikendam *examined and expounded.*

I Am constrained to run over the Examination of several Deeds produced in *Transcript* by Mr. *S.* and having finished the Discourse of the word Single, and in Composition, I am come to experiment the Tryal of it in the *Term proper*, with its *affix*, of which Mr. *S.* saith, *pag.* 38. *Thus (for example) in a number of Deeds and Conveyances, which I have seen recorded in the leiger-books of the Cathedral at* Canterbury, *and* St. Aultins *late Abbey there; phrased all of them after this manner*: *Tenendum ad (ar, in) Gavelikendam, &c.* I presume he hath cited the principalest of them; and if so, then (I assure you) I am not stumbled at any of them; and
Pag. 39. first, for that Deed of the *Sons of Wibaldus*; who did grant, *Infirmis de Herbaldune unam acram & dimidiam terræ, scil. Langeneker cum fratre suo Wiberto infirmo in perpetuam Eleemsynam*; and to Gavelkind: *Reddendo sibi duos denarios, &c.* Mr. *S.* rightly collects from the mold and cast of that Deed, the binding of the Heirs in relation

relation to their gift; for these *Sons* of *Wibaldus*, and their *Sons* and *Heirs*, and their *Daughters*, do all joyn in the *alienation* of this *Acre* and an half to *Herbaldune Hospital*. I will not trouble my self about the Deed so Quarrel at their Scrivener; who seldome found *dimidium* written for *dimidium*; or believe that he might in his intermixture of (*and to Gavel-kynd*) make an ignorant coherence; we will grant it all right and straight, and take along with us what M^r. *S.* saith, pag. 51. that such an expression as *Tenendum in* (*or, ad*) *Gavel-kynd*, or the like, was necessary to render the granted Land *partible*, after the Custome of *Gavelkind*, without the help of *preſcription*, requisite in partible Land else where out of *Kent*; and hereupon referrs to the pleading of *Burga* the wife of *Peter de Bending*; put down and published in the *appendix* to his book *Script.* 5. But the first he would have to be a gift or grant in *perpetuam*, but not in *puram Eleemosynam*; there is no more than *perpetuam*; which whether it be or not is nothing to our purpose; but the *Reddendum* as well as the *Tenendum* in that Deed hath somewhat not familiar; for it is said there, *Reddendo ſibi duos denarios*, *&c.* which *Sibi* hath relation to *Wiberto infirmo*, the last immediately before mentioned, rather than to any other in that Deed: for all other persons therein comprehended, are by doubles; as, *Nos filios Wibaldi Herbwinum & Eilwardum*; *Heredes ſuos Thomam & Paganum*; with this also, *Hoc concedunt filiæ ſuæ Baſilia & Haviſia*; so that *ſibi* in the singular number has not relation to any else, but to the infirm *Wibert*. To *him* it was that the two pence was to be paid; and the profits of the Lands in common to all the *infirm* of that house in perpetual *Almes*; *And*

to

to *Gavel-kind*; that is to say, that all the *Brethren* of that *Hospital* should have the like share and propriety in that *Acre* and the Half, as the *Sons* of any one could have, in their *Fathers* Land of that nature; and if not by this way, I can find no other to make any sense of it: for this clause, *And to Gavel-kind*, hath reference clearly to the *concession* and *Habendum*, and not to the *Reddendum*; and if so, who are those that should hold it in *Gavelkind*? *The Infirmes*? nor; for they were a body (though sickly) that could not dye: Nor the *Sons* or *Grand-children* of *Wibaldus*; for they had divested themselves of this Land, and invested their decrepit brother *Wibert*, with the rest of the *infirmes* of that *Hospital* with it. Nor could the *Tenant* claim any right by this Deed; for that it hath not relation to any *Tenancies*; besides, *Hospitals* in those dayes did not use to erode unprofitable *Tenures* to themselves; and where Land is said to be held in *Gavel-kynd*, there is an Estate of *Inheritance*; they are *Syncategorematical* or *relatives*. In the like sense is that Deed, which MS. makes his Script. 3. in *pag.* 184. where *Radūs Frone tradidit & concessit Deo & Fratribus Hospitalis Sancti Laurentii juxta Cantuariam* (by his Deed) *septem acras terræ meæ* (saith he) *tenendas in Gavel-kynde, de me & heredibus meis libere & quietè, reddendo inde annuatim, mihi vel heredibus meis* XLII. *denarios, &c. pro hac donatione & confirmatione, dederunt mihi prædicti fratres & heredibus meis quinque Marcas sterlingorum.* All that I can gather out of this, is, that *Ralph Frone* sold to the *Brethren* of St. *Laurence Hospital*, seven *Acres* for five *Mark*, and reserved a Rent of two and forty pence, the Land to be held of him and his Heirs in *Gavel-kind*; which, as in the other of *Herbaldune*

dum so was this to be understood, to be, to the common and equal use and behalf of all the *Brethren*; for if not so, I desire to be informed how it could runn into the *Tenure* of *Gavel-kynd* amongst them any other way; and here also let me caution you, to observe, that in the first Deed it is said to be granted, *in perpetuam Eleemosynam, And to Gavel-kynde*, and then comes in with the *Reddendum*; so likewise in the second Deed where the *Tenendum* and the *Reddendum* are at a *distance*; that by means thereof it is not probable at all, that *Gavel-kynde* should have any relation to the *Reddenda* in either; and seriously considered, doe plainly contain a *different use* from either *Rents* or *Purchase*. But to proceed to those several *grants* produced by Mr. *S.* in relation to the *Term*, as that of *R. dei gratia Sancti Augustini Cantuar*: (here somewhat is wanting, I believe it should be *Prior*) *& ejusdem loci conventus*; made to *Jordanus de Serres* and his Heirs of XL. acres of *Marsh-land* belonging to their *Mannour of Cistelet*; and that of *Alan* the *Prior* and the *Convent* of *Christ-Church* in *Canterbury* unto *Theb. de Einesford* and his Heirs of fourscore Acres of Land in their *Lordship* of *Northocholt*, by them to be holden, by *rent* and *Sute of Court at Orpinton*; ad *Gavilikende*; as also that of the same *Prior* and *Convent* to *Stephen de Kinardentone* of C. Acres and to his Heirs ad *Gavelichinde*. Again that Deed of *Gaufridus* the *Prior* and the *Convent* of *Christ-Church Canterbury to Joni* and his Heirs of a Sheep Pasture in *Osmundeseye*: *Tenend.* (say they) *de nobis successivè ad Gavel-kynde* by Rent; and that his Heirs successively shall give *de relevio* LVIs. and Sute of Court at *Leysdum*. All these *Grantees* had by the vertue of these several *Grants* an *in-*

Script. 4.

Script. 6.

Script. 7.

Script. 8.

statement

Statement into the *Tenure* of *Gavel-kind*, which was an Estate of Inheritance, and was to runn in a Parallel line with Lands of the like nature; that is, that the *Sons* or *Children* of the *Possessor* (when Deceased,) should hold those Lands according to the Rule of *partition* in *Gavel-kynd*; and there is no difficulty in them, as I can perceive; all that I find is, that the *Grantors* have Created an Estate of the Tenure of *Gavel-kind* in case there had been none before; none of them to my apprehension carry with them any notable Antiquity.

Script. 5. Least of all to the purpose is that, in pag. 178. where it is said, *Predecessores Dni. Regis concesserunt Manerium de Wells in com. Cant. postea concessum erat in puram & perpetuam Eleemosynam; nunquam partitum fuit nec est partibile*; that is, it was never parted, nor is partible; to which, all that I can say is, that it never was, nor is like to be (so holding) *Gavel-kynd-land*. But the passed discourse in this Chapter only shews the *Nature* and *Tenure* of such *Lands*; And makes nothing at all to the *Etymology* or the investigation of the true derivation of the word in contest. To conclude, M^r. *S.* in page 150. draws from his several discourses a double Consectary (as he is pleased to term it.)

1. *That the King may hold Land in Gavel-kynde.*

I must needs approve of it; and in case the King doth hold such Lands, and at his decease leaves several Sons behind him, they must part it; and that Princes have so done, I have already proved by the several examples of the Princes of *Wales*, and of the *German* Empire.

2. *That the King holding Land in Gavel-kind, in case he shall grant it away to any Religious House in puram & perpetuam Eleemosynam (in frank Almoign)*

it

it remaineth notwithſtanding partible; as before it came to the Crown; in their hands at leaſt, whom the Religious men ſhall infeoff with it.

The firſt part of this I grant: for if ſuch Lands be given to any Religious ſociety they remain partible, as to the profits of them, that is to ſay, among the Society; and ſo doth Land of any other nature whatever, in the ſame manner being veſted, paſs into a partible Quality; that is, the whole body having an Intereſt, all members of that body receive part and ſhare of the benefit: but for any other ſort of partition, I cannot fancy how it ſhould be among them. And then again, it doth not neceſſarily follow, that thoſe that are by this *Society* intereſſed with the holding of thoſe Lands under them, ſhould hold them in the *Tenure* of *Gavelkind*: for by ſuch a Grant, (as I ſaid before) in this *Tenure* of *Gavel-kind*, the ſaid *Society* or *body* diveſt themſelves of the *fee-ſimple*; and inveſt the *taker* with an *eſtate* of *inheritance*. And again, this muſt have a full reference to the *Society* their manner of granting it; and then it may even as well (if it were formerly *Gavelkind-land*) by their grant receive an extinction of its *Tenure*; for that in ſuch caſes (where it is (I ſay) ſo veſted) it is wholy depending upon the *force* of the *contract betwixt* the *perſons concerned*; and again, this ſame ſpecifical Land may ſo fall out, as to be made the very *ſite* of the *houſe*, and the *gardens* of this *religious Society or body*; and how in ſuch a caſe it will be capable of partition (except as I before have ſpoken, in the members their participation of an equal benefit) I know not. The progreſs exhibits

CHAP. XI.

Some offers at the termination (Kind) affixed in Compoſition to the word Gavel.

MR. *S.* in his 37th. page ſaith, that *Gavelkynd is a word compounded of Gavel and Kynd; the latter Syllable whereof commeth, and is contracted of the Saxon word,* ȝecynðe; *which by ſeveral good Authors is rendred, Nature.* Mr. *S.* in his 40th. page ſaith, that *Gavel is the main part of the word;* Which if ſo, then I hope I have diſpatched the main part of my work, and could willingly joyn with Mr. *S.* in his Expoſition of the latter part; for in what I ſhall declare my ſelf in this Chapter, ſhall be only Scepticiſm. But I am confident of my opinion in the firſt and main part; and here I muſt take notice of, and give to Mr. *S.* his due honour for his ingenuous Ratiocination upon the common received Interpretation of Mr. *Lambard,* and all thoſe that follow him, concerning the latter part of it, which he would have to ſignifie *Kindred*; and that the whole word together is of a Saxon Original, and is, ȝiꝑ-eal-cyn that is, *give to all the Kindred*; which flatly oppoſeth the very *nature* of the *Tenure*; becauſe where ſuch Lands are, that are ſubject to this partible quality, the *Kindred* do not *ſhare*; nor are they *partible* at all among them: but in the common caſe of the failer of Iſſue, then the next of *Kindred* in the neareſt Line. And in this pretended interpretation, the word *Kyn*, ſuppoſed to be *Kindred*, doth ſeem to nullifie by it, the known uſe of the *Tenure*:

ame: for if the *Kindred* be to part thoſe Lands, then muſt it ſo fall out, that either the Children part them with the *Kindred*, or the *Kindred* without the *Children*; for if the Title by this Denomination be in the *Kindred*, it muſt be one of the two; and upon ſerious conſideration I would think, that it deſerves a Cenſure for any to affirm that *Children* are of *Kyn* to the *Father*; for that *Kyndred* or *Kin* betokens a more *diſtantial relation* than a *Son* is to the *Father*; which (ſhould it take place in that Notion) would carry with it the confuſion of *alliances*; In Latin *Kindred* is called *Cognatio, quia Cognati, quaſi una communiter nati; vel orti ab eodem progenitore.* Theſe *Cognati* or *Kindred*, that are ſo diſtanced, may be ſaid to be *Sanguine conjuncti*, and *Conſanguinei*, becauſe they proceed from one *Progenitor*; yet are well known, not to participate of the ſame privileges with the *Children*. For the *Children* of one *Brother* do not *divide* or *part Lands* with the *Children* of *another Brother*, by this our *Tenure*; but if the Land ſhould thus paſs, then by what Right or Title can the *Children* expect any part of it? for that according to this interpretation it ſhould paſs to the *Kindred*; and ſo (as I ſaid before) being eminently implanted in them, it doth plainly ſeem to Debarr the *Children*, and Vacate the common uſe of *Partition* among the *Sons*: which is the more plainly Evicted by this, in that *Daughters* (in caſe it be inſiſted upon in relation to *Kindred*) are as much of *Kindred* to the *Father* as the *Sons* are; and yet in this *Tenure* of *Partition*, the Daughters have commonly no ſhare, when there be *Sons* exiſting. Mr. *Verſtegan*, who would willingly (obſerving ſome inconveniences in the Lati-

tiude of Mr. *Lambard's* expoſition) reſtrain it; would make (*Kynd*) to ſignifie *Sons* or rather *Children*; which if in the laſt, then I ſay, that Daughters as well as Sons at the ſame time are very rarely participants in the Partition of Lands together, except in thoſe caſes I formerly ſhew'd. *Doctor Powel* in his Additaments to the *Cambrian Hiſtory*, (which I cited fully before) ſaith; *Here I think fit to ſay ſomewhat of the Cuſtom and Tenure of* Wales, *&c. that is the Diviſion of the Father's Inheritance among all the Sons, commonly called Gavel-kynd*; the *Doctor* writes **Gavel** in *great* and *large Characters*, and *Kynd* in ſmall; as being Dubious of the Connaturality of them. **Gavel**, he affirms to be *Britiſh*; but not knowing what to make of *Kind*, paſſeth it over in ſilence. I ſhall be farr from Peremptorineſs in my own ſentence concerning it. One while I thought it might have been derived from the *Britiſh* word **Cennedl**, which ſignifies *generatio aut familia*; as in that commonly uſed word **Pen-cennedl**, which is received and expounded to ſignifie *Princeps Generationis aut familiæ*, the *chief* of a *Kindred* or *Blood*; who among the *Welſh* are reverenced and obſerved, as I told you the *Lords* or *Chiefs* of *Clans* were in the *High-lands* of *Scotland*; and ſo **Gavel-kennedl**, might ſignifie *Tenura familiæ aut Generationis*: Which that I may bring it a little nearer to the ringing of the pronunciation; is by ſome reported to have been ſounded **Cennedh**, which with great eaſe in the compoſition may retreat into *Gavel-kynd*, and is of the ſame *uſe* in that *ſignification*: Somewhat of that manner was anciently obſerved among the *Britains*, (though it ſeems to be loſt) for *Morgan* was a name of great uſe among them

them heretofore, as it is at this day; which ſignifies, *Got of the Sea*, as ſome *Criticks* in that Language do report; and was thought to be the proper name of that *Arch Heretick*, who in imitation of this his name was by the *Greeks* called *Pelagius*; which termination GAN (in the *Welſh name* I mean) is the fruit of Genneu, from whence with a ſoft mutation may come the latter part of our word enquired after, viz. *Kynd*. The other imagination was this, That the *Saxons* upon their firſt Co-habitation with the *Britains*, did borrow many of their words, by which they expreſſed the Denominations of places and things; I have already ſhewed ſeveral of them in this Tract, and could produce ſo many, as that by themſelves they would fill a Volume; and not only is there to be found this intermixtion with the *Saxon* tongue, but alſo much of the reliques thereof in the very *French*; (being the remainders of the *antient Gallick*,) which at this day is the moſt entirely kept by the *Brytains* of *North-wales*; for all things that related to *Nobility*, to *Propriety*, to *terms of Law*, to *Cuſtoms*, to *Offices*, &c. are in *Britiſh* carried through many ages from the *Brytains* by the *Saxons* down to us: The *Saxons* call ſome rents *Mailes*, the ſame word the *Scots* uſe to this day; and is as Mr. *S.* obſerves originally *Britiſh*, coming of their Mael, which (ſaith he) in the *Welſh Vocabulary* is in Latin rendred, *Lucrum, emolumentum, quæſtus*: as Maelio the Verb, *Lucrari, quæſtum facere*; and yet this *Welſh* word was not only made *Saxon* or *Engliſh*, but for the great uſe they had of it, a ſort of *Latin* alſo; for we find ſome Lands were held antiently, *per Gablum & malum*. The names of *Towns* were like the antient

Morgan ſignifies got of the Sea.

Pag. 34.

Nuptials

Nuptials of which *King Edward* the *Confessour* speaks, betwixt the *Saxons* and *Britains*; by which they became one Nation. So that the Denominations of antient *Cities* and *Places* did, and do, for the most part participate of both; as in *Durham*, *Dunholme*, *Dorchester*; the first Syllables being *British*, the later *Saxon*. *Chester* is a *Saxon* imitation of the *Latin Castrum*; for which the *Brytains* had a word of their own, viz. **Caer**; and all those Denominations of *places* with the said *Saxon termination* of *Chester*, are Demonstrations of *Roman Fortifications* in the time of the *Brytains*, as well as notes of the *Saxon intermixtures*; of which sort there are very many. In the like manner may it fall out with this *Termination* of *our Word* in *Controversie*; that in case, *Kynd* should chance to be a *Saxon affix*, such a mixture would not prove a thing unusual in their practice; and may very properly be so Conjoyned. If *Kynd*, or as it is in the *Saxon* ȝecynd, signifie the same thing as in *Man-kynd*; (and is in Latin rendred *Genus humanum aut natura*) it may then be supposed, that the *Saxons* meeting with the *British* **Gavel**, and understanding it to be their *common Tenure*, added something to express it to their own apprehensions; which being set together would signifie and that properly enough, *Genus Tenuræ*: For that *Kynd* of *Tenure* deserv'd to have a Denomination of greatest remark, it being (if not the only) yet the most eminent and most general *Tenure* amongst them. But having already herein professed * *Scepticism*, I will not attempt to impose upon the *Reader* either the one or the other; though either of them may pass, without the least injury to the *Tenure*; leaving it to the inve-

* Scepticism.

stigations

ſtigations of ſome more at leiſure: Provided that you conceive me not to have forſaken my ground, or given back in the concernment of the main part of the word, and that which is moſt material to the original of Gavel; although it had as many Terminations as either a *Latin* or *Greek word* declined in its ſeveral caſes; and therefore leave it, only deſiring an acceptation of this Eſſay in good part; without a Condemnation thereof; untill a better can be produced. And ſo I paſs my Diſcourſe over to treat ſomewhat

CHAP. XII.

Concerning the German Land-ſcheutan, *and their ignorance of* Gavel-kynd.

NOtwithſtanding the uncertainty we labour under, as to the Termination, in the precedent Chapter; yet in this we ſhall ſhew how that the *Saxons* and the *Germans* having the uſe of this *partible Tenure* from great antiquity, have a particular Denomination for it; not making uſe of any part of the word in queſtion; and Mr. *S.* himſelf in his 45th. page writes thus; *That, ſuch is the nature and condition of Gavelkind-Land; being not only ſubject and lyable to what the* Civilians *in their phraſe are wont to call Judicium; or Actio familiæ herciſcundæ, de communi dividundo; the Feudiſts, Adæquatio, Paragium; we in our Language call it Coparcenary-land-ſhifting, and the like. But withall ſo ſubject to it, as that Partition doth always accompany Land of that nature; and is indeed as inſeparable from it, as*

the

the contrary from Knights-ſervice-land. What is here called *Coparcenary-land-ſhifting* will afford us one glimpſe of Light more to our undertaking. For if the *Actio de communi dividundo*, according to the *Civilians*, joyned with *Adæquatio* and *Paragium*, according to the *Feudiſts*; be put in parallel with *Land-ſhifting*, they will all prove to expreſs the ſame thing as *Gavel-kind* doth. For although the *Germans* have this Tenure of Partition, as I have ſaid; yet underſtand they not, nor know any thing of the word *Gavel-kynd*, nor of its ſound; which had it been of a *Saxon* pedigree, aſſuredly they would have found out the Kindred and Relation it had to their Speech; and how all *Germany* ſhould ſo irrecoverably loſe the Denomination of a thing of ſo great conſequence, as this Tenure hath been, and is at this day, and nominate it by a word that hath not any affinity of ſound to our *Gavel-kynd*? and notwithſtanding all this, that this *Gavel-kynd* ſhould be of a *Saxon* original? and foſtered and known in our Iſland? and after many Centuries of years again Fathered upon them, who neither by themſelves, nor by their Neighbours can faſten any acquaintance with it? are Conſiderations very ſtrange and wonderfull to me. The Tenure they have, and expreſs it (I ſay) by a genuine and ſignificant word of their own, calling it *Land-skiftan*, as I find it moſt commonly written; which ſome expound to ſignifie *Part-land*; and I think is improperly written, *Land-ſhifting*. For Lands are as well ſaid to be ſhifted, when upon the Father's Deceaſe they deſcend to one Son; as when they are parted among many; ſo that *ſhifting* doth not ſo properly ſignifie a *Partition*, as it doth an *Alienation*. But properly

perly I find it to be the procedure of a word in *Dutch*, named *Scheut*, (or as in the plural number it is, *Scheuten*) which is the Denomination for that which the Latines call *Surculus*; and believe that hence it is, that we in our *Engliſh* call *young Twiggs* or *Branches*, *Shoots*: ſo that *Land-skiftan* or *Land-ſcheutan* is the ſame in ſignification with *Gavel-kynd*: both ſignifying *Tenura* or *Terra familias*, *Progenici*, *Stirpis aut Surculorum*, which is the *Tenure* or *the Land belonging unto the young Twiggs or Branches of a Family or Generation*; If you grant me the intire *Britiſh* interpretation thereof. But whether it be Denominated, as Mr. *S.* and others have it, *Land-ſhifting*, or this way which I adhere unto, I will not make it my buſineſs, about it to contend; only let me re-mind you, that this Cuſtom is ſo farr and freely owned among the *Germans*, even among their *Princes*, in relation to the *Dividing* and *Parting* the *Lands* of their *Principalities*, as ever it hath been in former times among the *welſh*; and that all thoſe other *Tenures* by which Lands are now held, are to be reckoned and eſteemed but as ſo many *Intruders* and *Novices* over all Europe; they being for the moſt part the effects of the policies of *Conquerours*, for the more ſecure Settlements of their *Militia's*. Which uſhers in the matter of the next Chapter, which ſhall be to ſhew

CHAP. XIII.

When and for what Reasons Primogeniture had the preference.

ALthough this *Theam* might give me occasion to look very far backwards, to the first granting *preference* to *Primogeniture*; yet I shall undertake no further than to discourse upon it, in contemplation of what Mr. *S.* saith in his page, *viz. The Conquerer consented to the succession of the Eldest Son alone, partly for his own and the Realms better defence and strengthning, and partly for the upholding and maintenance of Gentile familyes.* Which if true, then it was that *primogeniture* was first set into a peculiar esteem and account; and this an *innovation* of the *Norman Conqueror*; and our *Gavelkind*, probably the general use before. But in this Case we had best use moderation, and admit that neither the one nor the other had in those times the sole pre-eminence and singularity; but as there were divers *uses* in *forfeitures* under *West-Saxen lage*, *Dane-lage* and *Mercben-lage*; so I believe that there were then several *Customes* and usages as to the descending of Inheritances; all of which may with small curtesie be allowed to be according both to Law and Custome; for Sir *Edward Coke* upon *Littleton*, in the place thereupon cited by Mr. *S.* to confirm his assumption, saith: *Qui prior est tempore potior est jure*; and affirms *that in King* Alfreds *time*, *Knights fees descended to the Eldest Son*, and gives this as the reason, *for that by division of such fees between Males the defence of the Realm might be weakned*;

weakned; but in thoſe dayes *Soccage-fee* was divided between the *heir Males*; and here Sir *Edward Coke* is of the opinion that it was the general Cuſtome of all *England*; and ſo continued, till by fractions it ſhould ſeem that the *military ſettlements* were infringed. And to ſtrengthen this opinion, *he introduceth Glanvill*; of which words Mr. *S.* hath alſo made uſe in his book, and are thus. *Cum quis hæreditatem habens moriatur, &c. ſi plures reliquerit filios; tunc diſtinguitur, * utrum ille fuerit miles ſive per feodum militare tenens, aut liber Sockmannus, quia ſi miles fuerit aut per militiam teneus, tunc ſecundùm jus Regni Angliæ Primogenitus filius Patri ſuccedit in toto, &c. Si verò fuerit liber Sockmannus, tunc quidem dividetur hæreditas inter omnes filios, &c.* The laſt part of this Paragraph hath reference to *ſecundùm jus Regni Angliæ*, as well as the firſt; and this partition ſeems generally diffuſed, as if all *England* had a propriety therein; and out of *Forteſcue* he adds, *Hæreditas inter Maſculos jure Civili eſt dividenda*; this relation it hath to the *Civil Law*; as it ſhews its *Univerſality*, ſo alſo its *Antiquity*. And notwithſtanding, this may be thought not much to the purpoſe; yet ſomething (that is not much from it) may be from hence obſerved and collected: as much certainly as Sir *Edward Coke* ſhews in his *Chapter* of *Villenage* upon *Littleton*, concerning a ſort of *Gavel-kynd* in the bearing of *Armes*; *for they* (ſaith he) *deſcend to all the Sons, every Son being a Gentleman alike*; *which Gen-*

* Judge *Dodaridge* in his Treatiſe of Nobility, p. 119. ſaith: It was antiently ordained, that all Knights fees ſhould come unto the Eldeſt Son by ſucceſſion of Heritage; whereby he ſucceeding his Anceſtors in his whole inheritance might be the better enabled to maintain the Wars againſt the Kings Enemies, or his Lords. And that the Soccage Fee ſhould be partible among the male Children to enable them to encreaſe into many families, for the better furtherance in and increaſe of Huſbandry, *hæc ex Sr. I. Coke.*

try and Armes do not onely descend to all the Brethren; but also to all their posterity: but jure primogenitureæ, the eldest shall bear as a badge of his birth-right his Fathers Armes without any difference; for that as Littleton saith, Sectione——A-he is the more worthy of blood; but all the younger Brethren shall give several differences; & additio probat minoritatem. I have onely this to observe, though (I believe it) not unknown to any one, that knows any thing of Tenures (yet perchance it may not be unnecessary to make mention of it) to inform some that have not taken notice of it; and that is of a two-fold sort of *infeoffment* found antiently concerning Lands; the one is called *Vetus*, the other *Novum*; both of them erections of *military services*, upon such persons as were thought worthy the degrees of * *Thanes*. The first was that, founded before and by *william the Conqueror*; the other was that, which was in erecting betwixt the time of *William the Conqueror* and *Henry the third*, and in his survey of *Knights-fees* is called *novum feoffamentum*. Both I believe spun out of *Gavel-kind*, for I find

* In *Domesday* in *Dorsetshire*, there is this, Tré Tainorum Regis, in one Title, and in the next it is thus for the same thing, Tré Servientium Regis.

CHAP. XIV.

Partition of Lands by the Saxon Laws; those Laws continued and confirmed after the Conquest; the correspondence and progression of the British Language.

ALl that I have aimed at principally, is to shew that inheritances were antiently and generally partible,

ble, and would suppose them so, from the most antient inhabitants of our *Island*, who were the *Britains*; and so deduce the probability of the denomination of the Tenure (viz. *Gavel-kynd*) from them. What I have already said in this matter, I will not trouble the *Reader* with a repetition thereof; only in this place take notice that the *Saxons* had their Lands commonly partible among them; (except it were in their *Military Tenures*) to which Mr. *S.* hath subjoyn'd in his 78. page thus: *Now* (saith he) *it is true and not to be denied, that by the Laws of* Canutus *inheritances were partible; but how? it may be equally (like our Gavel-kind) but it is not so expressed, nor do the words inforce it. Its ordered there indeed, that a partition of the estate be made, in the one, between, or among the Wife, Children, and next of Kin by the Lord; in the other by the Heirs among themselves; in both not* ꝼꝼiþe emne, or, ꝼꝼiþe eꝼen, i. e. *equally; but* ꝼꝼiþe ꝼiħte; *in the former more explicitely thus;* elcum be þæꝼ mæþe, &c. *i. e. (according to the old version in* Brampton) *unicuique secundum modum, qui ad eum pertinet. Here is now no equal division spoken of, no equalling the younger with the elder Brethren, or the like; but the estate is to be shifted* ꝼꝼiþe ꝼiħte, i. e. *according to right, justly, or if you will (after the old version of the latter Law in* Brampton, *being the same verbatim with that in* Mr. Lambard *elsewhere) rectè: every one to have his due, haply after a Geometrical, not Arithmetical proportion.* Mr. *S. saith that it is not to be denied but that they were so; by the Laws of King* Canutus. That at which he makes a hesitation, is, because it is not expressed, how they were partible, and would have it to be onely *like* the *Kentish-gavel-kind*: for which I cannot imagine there can be any reason produced,

produced, nor Authority found, why it should not be the same; or why the *Kentish Gavel-kynd* should not be like that in other *Countries*; but he gathers it and inferrs it from this, for that it is not expressed to be Divided by *even* or *equal Portions*, but according to *Right*; to this I answer, I have shewed before several sorts of *partible Tenures*, and none of them opposite in *Condition* or *Nature*, but that they may all come under the *Genus* of *Gavel-kynd*; and all those Partitions, although not by *equal Portions*, yet are all according to the *right* of *Gavel-kynd*, which I think is sufficient to make them appear *Members* of this *Tenure*. But let us examine under what consideration the *Saxon Kings* had this *Tenure*, (as it was diffusive over *England*) in their Laws. And first of all, those Laws of *King Canutus*, (wherewith Mr. *S.* is so ill satisfied) He, after he had very piously taken care for what concerned the Worship of God, by the counsel and advice of the *Wise-men* of his *Kingdome*; on ðæm halgaw midwintres tid on wintanceastre, in the holy *Mid-winter-tide* at *Winchester*, (which Mr. *Lambard* expounds to be *Christmas*) enacted several Laws with this *Proœmium* before them: Ðis is ðonne seo worldcunde geredness. ðe ic wille mid minan witenan ræde. þ man heald ofer eal Englaland, that is, *This is then the worldly behest; that by the counsel of my Wise men, that men hold over all England*; by which we may perceive his *Laws* had an *Universal extent* over the *whole Kingdome*, and them we find to be *Built* upon the *Basis* of *Partition*: So in his 68th. *Law*, which is thus rendred, *Sive quis incuria, sive morte repentina fuerit intestatò mortuus; Dominus tamen nullam rerum suarum*

partem

partem (præter eam quæ jure debetur Hereoti nomine) sibi assumito, verum eas judicio suo uxori liberis & cognatione proximis, justè (pro suo cuique jure) distribuito, which in the *Original* is, Ac beo be hiſ dihte ſeo æhte ȝeſcyft ſpiþe ſihte, þiſe, ⁊ cildan, ⁊ neh maȝon, ælcum be ðæſ mæþe de him toȝebyriȝe, which is as I conceive thus; *And by his judgment let the Estate be shifted (or rather divided) according to right; Wife, and Children, and next of Kinn, to each one according to that proportion that belongeth to them;* this *Shifting* (if the word signifies so) or *Division*, must be according to *Right*. Where by the way note, that the *Saxon word* to them *known* was ȝeſcyft, and that they made no use of the word *Gavel-kynd*. But this was a general Law, and (as I said before) several places had their several manners and proportions of this *Tenure* of *Partition*; yet all those Customs were to be parted and descend according to *Right*. We find somewhat to the same purpose in the 70th. Law of *King Canutus*; *Porrò autem quam maritus sine lite & controversia sedem incoluerit, eam conjux & proles sine controversia possidento: Sin quæ in illum lis fuerit illata viventem; eam heredes ad se (perinde atque is vivus) accipiunto*; and in the 75th. Law it is provided, that if *any* in the *Army before* or in the *presence* of his *Lord, Dye fighting*, beon ða heſeȝeata foſȝyfene ⁊ ⁊ fon ða yrfenuman to lande. ⁊ to ehtan. ⁊ ſcyftan hit ſpiþe ſihte, yrfenuman. Let his *Heriot* be forgiven, and let his *Heirs* succeed him in his *Goods* and his *paternal Lands*, and let it be *Shifted* or *Divided* according to *Right*. Which Law seems to be *word* for *word* found among the *Laws* of *Edward* the *Confessour*; where I find, *& qui in bello*

ante

ante Dominum ſuum ceciderit, ſit hoc in terra, ſit alibi, ſint ei relevationes condonatæ, & habeant hæredes ejus pecuniam & terram ejus, ſine aliqua diminutione, & rectè dividant inter ſe. Which Laws did alſo take place among *thoſe* that *William the Conquerour confirm'd*, as in the 36th. Law that paſſeth under his name. *Si quis inteſtatus obierit, liberi ejus hæreditatem æqualiter dividant.* Now the collection from hence lyes naturally thus; that that Law, which generally reacheth to the behoof of his *Children*, or the *Deſcendants* of ſuch as Dye *Inteſtate*, is the moſt genuine Law; for this Law provides, that upon ſome emergent accidents, as *dying Inteſtate*, or *in Battel*, or *ſome ſuch ſuddain Chance*; that theſe notwithſtanding, the Land ſhall run in its *proper Chanel* of *Partition*, ſo that *theſe occaſions* ſhould not *attain* the *power* of *altering* the *courſe* thereof; which not meeting with ſuch an Obſtruction, would have without any *ſcruple* had its *natural courſe* of *Partition*. The like was not only in the *Knight-ſervice-land* ſpoken of to be in *King Alfred's time*, but alſo in all their *Bocland*; and *other Lands* that had the force put upon them by *Teſtaments or Deeds*. This partition came yet a little nearer to us; for in the 70th. Law of *Hen.* 1. upon the account of *Partition or Dividing*; Proviſion is made, that *Si mulier abſque liberis moriatur, parentes ejus cum marito ſuo partem ſuam dividant*; by which I underſtand *a Diviſion of parts* upon a *part* before received. And he that wrote the *Gloſſary* to the *Saxon Laws*, upon the word, *Terra ex ſcripto*, ſaith, *Hæreditatem vero temporibus illis non (quemadmodum apud nos) ſolus ætate Maximus adibat, verum ad filios omnes æqualiter fundus lege veniebat, quod illi (viz. Saxones)*

Saxones) Lande-rcyp-tan *dixerunt*; *& Cantii hac noſtra memoria eodem vocabulo* to ſhift Land; *id eſt herciſtere & fundum partiri, appellant*. By which it ſeems the proper *Kentiſh* word is, *Shifting-land*; as by this *Gloſſators judgment*, who I underſtand is a *Kentiſhman*; which, if ſo, let them be content with their *Saxon Land-ſhifting*; and let us alone with our *Gavel*, unleſs they will be pleaſed to own their true * Patrons. The *Laws* I confeſs that I have lately cited, do rather *glance* upon the *Cuſtom* of *Partition*, becauſe it is ſuppoſed, and taken for granted, that that Cuſtom was ſo *Paramount*, that there was little need of expreſſing thereof, which lies ſo *Couched there*, as it doth amongſt the *Welſh Laws*. And are like our *common Laws*, known to all, yet not expreſſed: generally received, yet not written. In the 78th. *page* of Mr. *S.* (we are ſtill upon the *Tenure* in queſtion) is cited *Davies his Reports*, of the *Iriſh cuſtom de Gavel-kind*, (which Book I have ſeen) and to it I ſay, if the *Iriſh know* the *word* by which *Davies denominates* the Cuſtom among them; it further confirms me in my opinion of the *Britiſh Etymology thereof*; * for the difference betwixt the two Languages is not ſo great, but that we may upon good reaſon believe they were one and the ſame antiently; nor ſo great a Diſſonancy at this day between them, but that the foot-

* The Britons.

* *Seld. Mare Clauſ.* lib. 2. cap. 1. *Scotland* and *Ireland* were antiently reputed *Britain*, *Hiberna Magna Britannia* dicta eſt Ptolomæo.

Mahumedes Acharranides Arabs—Mathematicus egregius qui ante annos 900. floruit, *Terræ latitudinem*, inquit, *obſervantes à loco lineæ æqualitatis* (Æquinoctialis) *verſus Septentrionalem partem, inſula Thule quæ eſt in Britannia, ubi eſt majoris diei longitudo* 20. *horarum, eam determinari deprehenderunt*; Etiam & alii Thulen pro ipſa Britannia uſurpaunt ſeu Anglia, ------ & Albategnius de Oceano quâ ab Hiſpaniis reſpicitur, verba faciens; *In eo*, inquit, *à Septentrionali parte ſunt Inſulæ Britannicæ quæ ſunt* XII. *& poſt hæc ab inhabitationibus elongatur, & quo procedat, ignoratur.*

steps of a former union, may easily be observed; and * the progress of Languages is a thing very well worth the observation. For by sundry discourses with several intelligent persons, concern'd in the Languages, and somewhat upon my own Observation, I can make it out, that if one of *Base Brytany*, meets a *Cornish-man*, that speaks the *Cornish*, they with small difficulty will each understand the other; the very Denomination of that Country being *British*, (for *Armorica* is derived from ar Mor, which hath no signification but from the *Welsh*, and is *upon* or *near* the *Sea*, with which the situation also agrees) let a *Cornish-man* pass into *Wales*, he will understand the *Welsh*, and be *understood* of *them*. A *Welsh-man* meeting with an Inhabitant of the *Isle of Man*, that speaks the *Manc-language*, both of them will understand one the others *meaning*. An Inhabitant of this *Isle* (*a Menavian*) meets in *Ireland* among the *Irish* an agreeable *Intelligence*; and the *Irish* with great facility communicate with the *High-land Scots* in their several *Dialects intelligibly*. So that animadverting this *Progression*, as I have *linked* them, much may be inferred of *Originals*, *Customs*, and *Manners*; among all of them having found the foot-steps of *Gavel-kind*; by the *Saxons* deduced to the *Normans*, and not altered by them. Concerning which, I have been larger before; and in my next Chapter shew

* Mr. *Selden* observes a little of the use in the Defusedness of the antient Language, saying; „Cornvallenses in Anglia, linguâ semper usi sunt Cambro-britannicâ, saltem velut Dialecto variatâ, uti etiam Aremorici in Galliis, Manniæ item Insulæ incolæ Hibernicâ, unde tamen nemo est hominum qui velit sequi aut hanc Angliæ Regibus, quâ Hiberniæ sive Domini sive Reges fuerint, parere, aut illos ex Cambro-Britannici principatûs jure aliquo principibus suis subjacere. *Mare Claus.* lib. 2. cap. 19.

CHAP.

CHAP. XV.

That in the Term (Gavelkynd) *is not Partition; Of free Socage and other Customs; concerning* Gavelkynd *extra Cantium; of the Antiquity of the Laws of* Howeldha.

THat in the Term (viz. *Gavel-kynd*) there is not any Partition, is plain, both by what Mr. *S.* apprehends of it, thinking it to be derived from *Rent*, and to signifie *Genus Gabli, vel redditus*; nor, by what I have given in, and exhited for my sentence, that it signifies *Tenura* the *Tenure*, (*per eminentiam*) of the *Family*, or *Genus Tenuræ*, and so consequently may serve for an answer to one part of the question put by Mr. *S.* in his 42d. page, where he saith, *Our next enquiry shall be whether Partition owe it self to Gavel-kind; either ex vi Termini or ratione rei? and gives his opinion with me, that ex vi Termini, partition doth not owe it self to Gavel-kynd*; and in some considerable cases, it is not enforced in the very use of it; for, in case a Father Dyes possessed or seised of such *partible Gavel-kynd-land*, and leaves but one Son behind him, this Land is not then to be *parted*; which if it had been, *ex vi Termini*, it must have either *ceased* its *use and force*, or else there must have been found out some other near Relations with whom the sole Heir had been *constrained* to a *Partition*; the like whereof I could never read or hear was ever done. This was very well understood by *Littleton*, and explained by *Sir Edward Coke*, in that Chapter of *Parceners per le Custome*; for Lib. 3. Sect. 265.

Sons (saith *Sir Edward*) *are Parceners in respect of the Custom of the Fee or Inheritance, and not in respect of their persons, as Daughters and Sisters be, &c.* And out of *Bracton* citeth this; *Et sunt participes, quasi partem capientes, &c. ratione ipsius rei quæ partibilis est; & non ratione personarum, quæ non sunt quasi unus hæres & unum corpus, sed diversi hæredes, ubi tenementum partibile est inter plures cohæredes petentes, qui descendunt de eodem stipite, semper solent dividi ab antiquo*; for *such Lands* belonging to a Family, relate only to the *Males*, (in case of their existency); but if not, then to the *Females*. So also we have it observed by *Glanvil*, who denominates such as hold by this *Tenure* of *Partition*, *Liberi Sokemanni*, of whom he writeth; *quibus mortuis, dividetur hereditas inter omnes filios; si fuerit Socagium, & id antiquitùs divisum; salvo tamen capitali messuagio primogenito pro dignitate Aeneciæ suæ; ita tamen quod in aliis rebus satisfaciet aliis ad valentiam. Si vero non fuerit antiquitùs divisum, tunc primogenitus secundùm Quorundam consuetudinem totam hæreditatem obtinebit; secundùm autem quorundam consuetudinem, postnatus filius, heres est.* I shall not enforce any thing from the Custom of *preference of Primogeniture* to *Socage Lands*, which were such as were *non antiquitùs divisæ*, and those to be but *secundùm consuetudinem Quorundam*; which expression signifies a diminution, both in respect of *Age* and *Community*; nor of the *Tenure* which we call *Burgh-English*; which, whether brought in by the *Saxons*, (because of its name) I cannot tell: But concerning that which *Glanvil* setteth down as the most common Custom of the *Kingdome*, and most antient; (as in his time it

was

was received to be) and the intent of his *Paragraph*; which is, to *Counter-distinguish* the *Tenure* of this *partible Land*, from the *Tenures* of the *Military fees*, where the *eldest Son* in *England* still Inherits; of which sort there were not so many, when *William the Conqueror* took his *Survey* of the *Kingdome*, as after times did bring them unto; when that no Land was permitted to be held free from the *Military tenure*; not *excepting* the very *Lands* of the *Church*: But he being so plain, I shall not trouble you with a *Comment*; and return to the subject of this Chapter, which is, that *Partition ex vi Termini* doth not owe it self to *Gavelkind*; no, rather *Gavel-kind* to *Partition*; for I believe, when at first this *Partition* was used and received into a common Custom, those *Users* were enforced and obliged to find and invent a word by which their Custom might be intelligibly expressed, rather than to make a Custom to the signification of the word; but where the Custom of *Dividing* under the *Title* and *Term* of *Gavel-kind* was once *received* and *setled* with its appurtenances, there it *inferrs Partition*, and passeth as a *common Law*; not only in *Kent*, but in *Christendome* also. To what Mr. *S.* saith by way of objection out of *Bracton*; that he is express for a *Partition*, *ratione rei vel ratione Terræ*; if by it, Relation is had to the *condition* and *quality* of the Land, in saying, * *Sicut de Gavel-kynd, vel alibi ubi terra partibilis est ratione terræ*; then would I be informed what they mean by this *ratione terræ*; for if the *ratio rei* signifies the *Tenure*, then the *ratio terræ*, should have relation to the *nature* of the *Soyl*; for sure it cannot have relation to the *distance* or *difference* by the *Celestial degrees*: I cannot

* Pag. 374.

not (I confeſs) apprehend the nicety of the diſtinction; and therefore paſs to that which Mr. * *S.* ſaith; that that property alone of the Lands being *Gavel-kynd*, or ſo called, doth not ſuffice to render it *Partible*; if the queſtion be ſo farr obtained and granted, that *Gavel-kind* ſignifies *natura redditus*; and that that, is the *genuine Etymology* thereof; then muſt it be true, and conceded: But on the contrary, I know much *Gavel-kynd Land*, that is not ſubjected to *Rent*; how will it then anſwer the *Tenures derivation* and *ſignification*? whereas in this expoſition of the *Term* that I have given, (viz. *Tenura progeniei aut familiæ*) *Diviſion* ſignificantly reſides in its *name* and *nature*; I am ſure the inference is ſo ſtrong, that where there is *Gavel-kynd*, there is *Partition*: and it may as properly be ſaid, that the *Tenure* of *Burgh-Engliſh*, by the intrinſecal Valew of its Name, doth not import, the youngeſt Son ſhould Inherit the Land; as that *Gavel-kind* doth not inferr a *regular participation* upon *Partition* by the Parceners, which to ſtrengthen it the more, is now become an antient Cuſtom; and this *Sir* * *Edward Coke* ſaith, is one of the *main Triangles* of the *Laws* of *England*; theſe Laws being divided into *Common-law*, *Statute-law*, and *Cuſtom*; of the laſt of which he addeth out of *Bracton*; that *Conſuetudo quandoque pro lege ſervatur, in partibus ubi fuerit more utentium approbata; & vicem legis obtinet: longævi enim temporis uſus & conſuetudinis, non eſt vilis Autoritas, longa poſſeſſio (ſicut ejus) parit jus poſſidendi & tollit actionem vero Domino*: So that its continuance for ſo long a time to be a Cuſtom, gives it a Privilege without any Impropriety of Speech to be called a Law, notwith-

* Pag. 44.

* Lib. 2. Sect. 165.

notwithſtanding the ſeveral *uſages* in this *Tenure*; and although Mr. *S.* ſeems ſtartled at what is before cited out of *Bracton*; *Sicut de Gavel-kynd vel ALIBI, ubi terra eſt partibilis, &c.* there is no reaſon that this *Alibi* ſhould ſo offend him, as to call it an improper expreſſion; for I believe there is ſcarce a *County* in *England*, but hath this *Tenure* more or leſs; beſides what places I have already cited in this diſcourſe; I know there is much in *Shropſhire*; yet take one more upon the other ſide of the *Kingdome*, in the *County* of *Norfolk*, which is thus Recorded in the *Chamberlains Office* of the *Exchequer*. *Placita coram Rege. Anno* 20. *Edw.* 3. *Term. Hillar. Norfol.* 97. *Aſſs. in qua Johs Buxkyn chr. profert ſcriptum relaxationis Johis de Pickering, & Willielmi fratris ejus Gallicè factum de medietat.* vi. *Meſs. &c. &* iiii. *Tercellorum in Clipeſby, Billokby, &c. In hoc placito patet quod Tenementa quæ ſunt de feodo de Pickering ſunt partibilia inter Maſculos*; So that turn into what part of the *Kingdome* you pleaſe, I believe you will find *Gavel-kind*. But Mr. *S.* proceeds by way of wonder, ſaying, *We are told that this Cuſtom of Gavelkynd Partition takes place* (*hath done at leaſt*) *in other Counties*; and *Sir Edward Coke* in the ſame manner, hath lapſed into the like miſ-apprehenſion; for upon theſe words of *Littleton*: *En le Countie de Kent*, he makes this note; *for that* (ſaith he) *in no County of* England, *Lands at this day be of the nature of Gavel-kind of common right, ſaving in* Kent *only*; *But yet* (he preſently adds) *in divers parts of* England, *within divers Mannours and Seigniories, the like Cuſtom is inforce*; for my part I muſt acknowledge I am to ſeek, as to the neatneſs of the diſtinction;

first

first (saying) that *no County* of *England* hath Land, (it is not said *all* the Land of the *County*) of the *nature* of *Gavel-kind* of *common right*; and yet that in divers parts of *England*, within divers *Mannours* and *Seigniories* the like *Custom* is in force: if the *Salvo* lyes in this word, viz. *of common right*. I would willingly be satisfied, whether *Lands* in *Gavel-kind* do not pass, both according to *common Right* as well as *common Law*: Certain it is, that the *common Law* of that *County*, *Hundred* or *Seigniory*, where *Gavel-kynd* is in force, makes the Children *Participants* of that Land by *common Right*; and it is the *common Law*, by which that *common Right* is or can be *claimed*. In Pages 53. and 54. Mr. *S.* speaking of what *Littleton* instanceth in *North-wales*, that this Custom of *Gavel-kind* partition taketh place, besides *Kent*; he introduceth it from that Authority, not as his faith and belief, but with a, *we are told*. But let not the Scruple be so great, when I declare what before I have shew'd; that it is in *South-wales* as well as *North-wales*; and in other places as well as there. But then he proceeds to question, thus; *what custom I pray?* if you enquire of *Littleton*, he will tell you it is the *Custom of Gavel-kind partition*; or enquire of the *Customers*; you will find them no *Strangers* to the *Denomination* of *Gavel*; and the word in use among them, even to express the Tenure. *Littleton's words* are these, *Auxy tiel custome est en autres Lieux Dengleterr, & auxy tiel custome est en North-gales, &c.* which is as much as to say; *Also such Custom* (*he writes of Parceners by Custom, which is Gavel-kind there*) *is in other places of* England, *and also such Custom is in North-wales, &c.* and the like Custom

as

as our Author mentions to be in *North-wales*, he ſaith, was alſo in *Ireland*; for there (he adds) the Lands alſo (*which is one mark of the antient Britons*, mark this) *were of the nature of Gavel-kind*; *for that by their Brehon-law, the Baſtards inherited with their Legitimate ſons*; *but as to the Baſtards, that Cuſtom was aboliſhed.* Agreeing with *Littleton* in this point, ſee an old Statute. *Aliter uſitatum eſt in Wallia quam in Anglia, quo ad ſucceſſionem hæreditatis, eo quod hæreditas partibilis eſt inter hæredes maſculos, à tempore cujus non extitit memoria partibilis extitit, Dominus Rex non vult quod conſuetudo illa abrogetur, ſed quod hæreditates remaneant partibiles inter conſimiles hæredes ſicut fieri conſuevit; & fiat partitio illius ſicut fieri conſuevit.* To that which Sir *Edward Coke* wonders at, which is the *Participation* of *Baſtards* by the *Brehon-law* in the Lands that are partible; I have already ſhewn, it was a Law or a Cuſtom among the *Britains*: But Sir *Edward* concludes, that *Gavel-kynd* Cuſtom in *Ireland* is one mark of the *antient Brittons*; Let not therefore our Profeſſors and Students of the Law, take it ill, that I have thus treſpaſſed upon their *Province*; ſince all I have ſaid, receives ſo great a *Buttreſs* or *Prop* by theſe words of Sir *Edward Coke*. The coherence and agreement betwixt the *Britiſh and Hybernian Laws*, makes me think that antiently they were Govęrned by one and the ſame Law; which if granted, then have we one Argument more to re-inforce the Antiquity of thoſe, that were only refreſhed by *Howel-dha*. But becauſe I have had occaſion ſo often to mention theſe *Welſh* Laws, aſcribed to *Howel-dha*; (as the *Norman Kings* did our Laws to *Edward the Confeſſour*, and as *Edward*

the Confeſſour did the *ſame Laws* to his *Grand-father Edgar*, *&c.*) I think it not amiſs to give the Reader ſome account thereof: They are mentioned by all * Writers of *Britiſh* antiquity with a great reſpect, who generally agree that they were taken out of the Laws of *Mulmutius Dunwallo*; who is generally acknowledged the great *Legiſlator* of the *Brytains*; of whom, take what *Balæus* writes, placing him in his *Catalogue* of *Writers*, with this *Encomiaſticon*: *Dunvallo Molmutius, Clotenis Cornubienſium Ducis filius, ſapientia & pulchritudine proavos omnes longè exuperans, devictis Loegriæ, Cambriæ & Albaniæ Tyrannis, ſolus apud Brytannos Tertius & Viceſimus Rex imperabat, &c. Protulitque tandem ſermone ſuo vulgari Brytannico, pro his perpetuo ſervandis*

Statuta Municipalia----------lib. 1.
Leges judiciarias----------lib. 1.

Has poſt mortem patris, Belinus Rex confirmavit, juſſitque Molmutinas vocari. Eaſdem etiam Gildas Cambrius, in latinum ſermonem tranſtulit, & Alphredus Magnus in Saxonicum. Fatum obivit poſtquam 40 annis magnificè regnavit, ad Templum Concordiæ, quod condiderat Trenovanti ſepultus, &c. ante ſervatorem natum, 430. King *Howel* (Sirnamed *dda*, *i. e.*) *the good*, who flouriſhed in the year *of Chriſt* 942. perceiving his *Brytains* under a kind of *conſtraint*; being pent up in the two weſtern *extremities* of the *Iſland*; is ſaid to have made *new Laws*, and *fitted* the *old* to the *exigence* and *behoof* of thoſe times; and D^r. *Powel* in his Additaments to the *Cambrian Hiſtory*, ſaith, *That he did reform the Laws and Cuſtomes of Wales*: then it ſeems that theſe Laws, were Laws; and theſe Cuſtomes, were Cuſtomes before the Reign of *Howel*;

* *Lancarvan, Lloyd*, Dr. *Powel.*

Howel; who only took upon him *Reformation*, not *alteration or innovation*: and the *Doctor* further diſcourſing of thoſe *Referrees*, (to whom *Howel* had committed the care of this work; who for that end were to meet at a place called Ty-gwyn in *Caermarthenſhire*;) ſaith, *theſe had in charge to examine the old Laws and Cuſtomes of Wales, and to gather out of thoſe, ſuch as were meet for the Government of the Countrey; who fully did diſcharge their Commiſſion; thus: in reteining thoſe that were wholſome and profitable: expounding the ambiguous and doubtfull; and abrogating the ſuperfluous and hurtfull.* By what hath been here ſaid it ſeems theſe *Laws* are ſomewhat improperly aſcribed to *Howel-dha*; ſince the charge to the *Referrees* was to *examine* and *gather* the *old-Laws*; and the accompliſhment of that charge was *reteining*, *expounding* and *abrogating*; no mention at all of *introducing* any new *Laws* or *Cuſtomes*; this conſidered, with the turmoyls the *Brytains* had from the time of *Julius Cæſar* to the Reign of *Howel-dha*; and obſerving their unſetled fluctuating conditions from time to time through all thoſe Ages, may afford us ſufficient reaſon to ſubjoyn; that *theſe* in probability were thoſe *antient conſtitutions*, *Laws* and *Cuſtomes*, which without any difficulty may be allowed to be the procedure of the legiſlature of *Mulmutius Dunwallo*. Other *M S.* Copies thereof I underſtand to be in the Cuſtody of ſome *Welſh* Gentlemen; one whereof is in *Welſh* and *Latine* one ſet anent the other. My Copy, beſtowed upon me ſome few years ſince, hath the *initial Letters* of each Law, handſomely rubricated; and carrieth antiquity in the tranſcript thereof: among whom I obſerve this *Gavel* or *Tenure of Partition* is made the very *hinge* or *Axis*,

upon which the whole body of them move. I think it will not be taken amiss if I transcribe one more, that carries with it not onely partition, but also the very manner of it, prescribed so antiently, and it is this:

Ex legibus Howeli boni.

Cum fratres inter se hereditatem dividant; Tydyn *& edificia patris & octo acre terre cedent juniori, cum calderio, Securi, & cultro sui patris; hec tria non potest pater nisi Juniori dare; & si in vadimonia sint data, possunt redimi & nunquam amitti: quilibet frater debet* Tydyn *& octo acras: Junior debet dividere hereditatem inter fratres; senior autem primò eligere debet; postea secundum ætatem suam unusquisque ad minorem.*

Tydyn *est domus.*

In like manner there are certain *Principals* (for so they call them) in *Urchenfield*, that (like *heir-looms*) pass to the *Eldest* (and herein, the *Welsh* and this doth disagree) and are not subject to partition; such as is the *best beast* of any sort; the *best bed* and *furniture*; the *best table*, the *best dish*, &c. which are like the *caldron*, *hatchet* and *knife*, that cannot by the aforecited Law be given away from the *youngest Son*, nor so much as set to pawn: by which Law it is provided, that after the setting out of *eight acres* with the Fathers Tenement or dwelling house, then is the partition to be made by the youngest Son: the Eldest and so the rest according to seniority first making their choice. Here are two different usages in the same Tenure of partition, and no wonder is it that we find in that old forementioned Statute, *Aliter usitatum est in Wallia quam in Anglia*; when that the different usages in *England* are so many; but this *Aliter usitatum est*, must not be imagined to argue that in *England* it was not at any time used; the *Aliter* refers to the time when the *Statute* was enacted: yet this not-

notwithstanding Mr. *S.* would not have it *Gavel-kynd cuſtome* taken in its *true, plenary* and *compleat acception*; here be many qualifications, but yet (not to repeat what I formerly upon this urged) it will prove to be the *true, plenary* and *compleat acception* of the *cuſtome* that is *taken* and *received* in other places *extra Cantium*, having all thoſe qualities and conditions that are comprehended in that uſed in *Kent*; which to avoid repetition I ſhall paſs over, and inform you how that

CHAP. XVI.

The Changes very conſiderable from the Tenure of Villenage to the Tenure of Gavel-kind.

Mr. *S.* having ſeveral times met with Deeds that expreſs the change of Lands held in *Villenage* into *Gavelkind*; I think it not amiſs to ſhew of what conſequence this exchange was. He, in his 58th. *page*, ſaith: *'Tis true indeed at this day and time out of mind (haply from Richard the ſeconds time) ſuch ſervile works (properly called villein-ſervices) have been, as they ſtill are, intermitted, or rather quite ceaſed; inſomuch as all our Gavel-kynd-land, in point of ſervice, now differs nothing from free Socage: being ſuch ubi ſit ſervitium in denariis.* That there were changes out of *Villenage Tenures* into others, more *free*, and *leſs ſervile*, is frequently to be found; but by that to lay any force upon the *interpretation* or *Etymologye* of the *word*; or that upon the account of thoſe citations brought in by Mr. *S.* it ſhould ſignifie *Genus gabli aut redditus*; becauſe there was a rent

fixed

fixed upon the change: I cannot yield unto it. To what he obſerves in his 59th. page, out of the *Cuſtomal* of *Eaſtry Manour in Kent*, of the changing *Octo Cotarii pro Gavel-kende*; ſince that *Gavel-kind* in *Kent* is received as a *Tenure* far leſs *ſervile*, than their ordinary *Villenage*, this change, I ſay, was very conſiderable, and did well deſerve a ſum of money *in Gerſum* to the Lord; for that theſe *Cotarii* before this change, being by *Tenure Villeins*, and ſo conſequently their Lands not *deſcendable* to their Children; their perſons, not ſcarce their own; their acquiſitions got by the ſweat of their brows, at the will of the Lord; by this *change* theſe *cotarii* being inveſted into a propriety of this Land; and this Land made to deſcend as *in Gavelkind*; the mutation was very advantagious to the occupant. But yet there appears ſomewhat further to me to confirm my aſſirmation; and 'tis thus to be conſidered: *Mutati ſunt octo Cotarii Pro Gavel-kende, Medleferme tenet unum meſſuagium, tres acras, quæ ſolent eſſe cotar. modo reddit* XL. *den. de Gablo.* Theſe *Cotarii* had their Lands changed into *Gavel-kend & Medleferm tenet unum meſſuagium, que ſolent eſſe Cotarii, modo reddit* XL. *den. de Gablo.* They are changed into the Tenure of *Gavelkind*; and pay rent XL. *den. de Gablo.* this laſt, notwithſtanding the propinquity of ſound cannot have any relation to *Gavel-kende*; for then it had been a Tautologie; but *Gavel-kind* and *Gablum* are ſet forth into different and diſtinct uſes. The *Tenure* was changed into *Gavel-kind*, with the reſervation of an annual Rent of XL. *den. de Gablo*; that is to ſay, upon the account of that impoſition made at the agreement; by way of acknowledgement for creating this Land, *Gavel-kind-land.* The

laſt

laſt hath relation to the rent reſerved and the acknowledgement, the other to the manner of holding in relation to the change, and to the future deſcent. So likewiſe is that other citation out of the Archbiſhops accompt-roll; in the year 1230. where it is thus entred, *& d.* XIII^{s}. IV^{d}. *de fine Cotariorum, ut Coteriæ ſuæ ponerentur advredditum*; that is to ſay, that their Cotages may be fixed and certain in relation to their *Gables* or *Rent*, for which they paid a fine; whereas the firſt citation had relation both to Tenure and Rent. I ſhall now take my progreſs northward, and inform you, that there is alſo as the remainder of the antient planters

CHAP. XVII.

Gavel-kind in Scotland; *when the Engliſh tongue and the Cuſtomes were firſt planted in* Scotland.

MR. *S.* in his 53^{d}. page, reports *That the Tenure of* Gavel-kynd *in other Countreys beſides Kent, is a cuſtome indeed; but yet like to that in Scottiſh Socage Land; to which he produceth as a Teſt. Skenæus.* I find by M^{r}. *S.* that *Gavel-kind* ſhall be permitted in other Countreys to be like unto that in *Wales*, like that in *Ireland*, like to *Scottiſh Socage-land*, rather than like to it ſelf or to the ſame. * What the manner of the *Scottiſh-Socage-land* is, or hath been antiently in *Scotland*, I am not certain; but of this I am aſſured, that there are ſeveral *Mannours* heretofore belonging to certain *Biſhops* of *Scotland*, where there is the ſame uſage of partition of Lands as in *Gavel-kind*; which ſhews that thoſe Lands belong-

* Yet Mr. *John Skene* ſaith in his Chapter, *de linea recta deſcendentium* thus, *Gif ony man deceaſis, & lea-*

vis behind him maa Sons nor ane, either he is Succomannus, & haldis not his Lands be ſervice of ward; and then his Heretage is divided amangſt all his Sonns, or he is miles--In the quhilk caſe, the eldeſt Sonne ſucceedis in the hail Lands; quhilk heretably perteined to his father, &c.

belonging in thoſe antient times to the *Church* did not feel the ſeverity of the War; but enjoyed this *Cuſtome* and *Tenure* from their moſt antient *proprietors*. Which is alſo plainly to be perceived by the retention of this *Tenure* (yet in force) amongſt the antient *Britains* of the *Iſles*; who by reaſon of their ſite were moſt free from the fury of the War. I call them *Brytains* (though now they are called *High-landers*) becauſe upon tryal of words and denominations of places, I find that *Language* and the *Britiſh* ſo cohærent, as that there is not much difference between them to a ſerious obſerver, (as I have before treated) conſideration being had to ſuch words as have ſuffered by the *Saxon converſe*. For this *Iſland* at its firſt plantation, did certainly upon the increaſe of families, who firſt ſetled in the *Eaſternmoſt* parts thereof, remove their increaſe *Weſtward* and *Northward*, till ſuch time as by this means both *Cornwall* and the *Orcades* were alſo planted; and then the *Saxons* in proceſs of time inforced the *Brytains* to leave theſe their antient Seats in the *Eaſtern parts* of the *Iſle*; (yet not all (as I ſhewed before) who retired by their force either into *Cornwall*, *Wales*, the *Scottiſh Highlands*, or *Baſe Britainy* in *France*, where they in their offſpring do occupye theſe places, (with *Ireland* alſo) unto this day. There lyes a large Iſland named *Lewis*, belonging to the *Earl* of *Seaforth*, between the *Hebrides* and the *Orcades*; which wholy holds by this Tenure of partition; by what name there called, I could not underſtand, for their Language there, is *Iriſh-Britiſh*; but if according to M^r. *S.* the name were *Saxon* in its original, what hinders, but that all Countreys where the *Saxon* Language is in uſe, ſhould have the knowledge

of

of the word; and upon this ground it is, that I may with more probability (*è contra*) inferr; that because it is not so universally known in those places where the *Saxon* tongue is spoken, it administers more reason to believe and conceive it should have another *origine*; than to be so easily lost among the very users of the Language; and in no such place to be found (as *Mr. S.* would have us believe) but within the Septs of *Kent*. The time of planting the *Saxon Customes* in *Scotland* is difficult to be known; but if the planting the Language argues any probability of the planting of Customes; then we had best make the time of the planting the *Saxon* tongue the matter of our enquiry; thence being able probably to deduce, that at that time the Customes were received: for it was far otherwise in the *Saxon* settlement in *Scotland* than in *England*. For here they planted and setled with the *Brytains*; there they drove out the *Picts* totally, and seated themselves in their places; upon which account it was, that they not having any persons with whom they might co-inhabit, and so participate of their Customes, were upon their settlement constrained to create new Customes, or else to revive their own, for their best security. I think them much in an errour who affirm that the Identity of Language betwixt *us* and *Scotland*, was occasioned from the multitude of the *Profugi*, or such as for the security of their persons fled under the protection of *Malcolm Canmoir King of Scotland* in the time of *William the Conquerar*; certainly, considering the old animosities betwixt the two Nations, it would have ill become the curtesie (at least the policy) of the *Scotch King*, to have received so many *English* guests, as by

their number or multitude might have been able to plant their Language among his people, so different from their own. I must confess, that notwithstanding this national enmity, some he did receive, out of whom, he chose his wife, *Margaret Sister* to *Edgar Etheling*; and bestowed Lands upon divers of them. A Catalogue of several of them the *Bishop of Rosse* hath given to us by their Surnames, of whom he reckons the families of *Calder*, *Lokert*, *Gordon*, *Seaton*, *Lauder*, *Waun*, *Meldrun*, *Shaw*, *Lermount*, *Libertoun*, *Straquhin*, *Rettraye*, *Dundas*, *Cockeburne*, *Myrtom*, *Inglis*, *Leslye*, *Cangill*, *Cuithe*, *Mar*, *Menzeis*, *Abercrumy*, *Lindsay*, *Vaus*, *Ramsay*, *Loual*, *Torvis*, *Preston*, *Sandelandis*, *Bissat*, *Foullis*, *Wardlow*, *Maxuell*, *&c.* These are the most and principallest in that account, from whom it cannot be rationally expected that that *Kingdome* should receive a mutation of their * Language, and therefore I shall fix it upon a greater probability. *Speed* saith, that *Hengist* sent for *Octa* and *Ebissa* two principal Captains (among the *Saxons* in *Germany*) who being embarked in forty Pinaces, sailed about the *Picts Coasts*, wasting the *Isles* of *Orcades*, and got many *Countreys* beyond the *Frith*; Yet this was not a settlement, for that it is not probable they fixed here at this time; again they had much War with the *Saxons*, when the *Kingdome* of *Northumberland* was planted in their neighbourhood, which may possibly afford some small Knowledge of the Language one to the other, but not enough to confine the *Scottish tongue* within the *Mountains* and *Highlands* of *Scotland*. What I find in the

* Mr. *Shene* under the Title of *Scotia*, saith, That King *David* the first, *in the third yer of his Reign, Anno Dom.* 1126. *Be his Charter maid*, Omnibus Scotis & Anglis, tam in Scotia, quam in Ludoneio constitutis, *gave to St.* Cuthbert *and his Monks in* Durham, *the Lands of* Coldingham, *&c.*

the *Scottish History*, written by *John Lesley Bishop of Rosse*, (a person of great repute, being *Embassadour* for *Mary Queen of Scots* in the Court of *Queen Elizabeth* in *England*,) whose book was Printed at *Rome* in the year of our Lord 1578. is that, out of which I shall collect this ensuing Discourse. *Kenneth* the 69th. *King* of *Scots*, who flourished about the year of *Christ* 840. defeated the *Picts* near *Sterling*; and improving his Victory into *Northumberland*, prosecuted them with Fire and Sword so closely, that (you shall have it in his own words) *omnes incolas promiscuè nulla sexus habita ratione obtruncat, & Pictici nomen propè extinxit: Qui autem evasêre, in Daniam, Norvegiamvè, alii in Northumbriam se abdiderant*; and presently after concludes; *Sic Pictorum Gens post Centesimum supra Millesimum ex quo in Albionem venerat annum, tantum non deleta est*; here we find the *Pictish* Nation in *Scotland* almost expired, who had very long before this been intruders into this part of the *Island*; and during this *Kings* life, those Lands upon which they had lived were re-occupied by the old *Irish* or *Brittish inhabitants* of the *Hills*, who were constrained to live in those mountains and fastnesses during the time the *Picts* kept possession of the *Lowlands*; and at that time the *Scots* changed the names of those *Regions* given unto them by the *Picts* and their *Princes*, into other different appellations. But *Kenneth* dying in the *twentieth* year of his *Reign*, and in the 855. year of *Christ*, to him succeeded *Donald* the *fifth*, who is said to be *Germanus Kennethi*; for *Buchanan* observes, that the *Custome* of *Scotland* then was, If the Sons of the deceased *King* were * under age, they elected the most aged, and greatest experienced of that *Kings* line to be

* *Minoris ætatis.*

their *Prince*; so that this *Donald* was chosen into the *Marble-Chair* which *Kenneth* his *Predecessor* had brought from *Argile* and placed in *Scone* (the same that at this present remaineth as a *Relique* and a *Trophy* in the *Abbey* of *Westminster*) *Donald* proved very effeminate and vicious, and puft up with his felicity, so over-flowed with vices; that he by them gave the opportunity and occasion of the ruine of that, which *Kenneth* by his valour had archieved; the *Picts* who all this while lay close in *Northumberland*, understanding his carelessness and loosness, *istam suæ libertatis asserendæ occasionem arripientes* (saith the Bishop) *cum Auxiliaribus Saxonum & Britannorum in Scotiam irrumpunt. Donaldus, collecto exercitu, hostibus prope Jedburgum occurrit: initoque prelio, illos in fugam compulit. Rex, nostrique milites victoria insolentes, noctem sequentem, sine excubiis, supini; sine ordine, sparsi; sine disciplina, negligentes; sine timore, stulti; in luxu & compotationibus consumunt. Hostis de hac re certior factus, & ad omnem occasionem intentus, illos media nocte somno vinoque sepultos, opprimit: interfectisque circiter viginti millibus ipsum Donaldum cum nobilibus domum captivum ducit. Donaldus, ut se in libertatem assereret, omnem regionem inter Strivelingum & Cludam amnem inte-jectam*, BRITANNIS & SAXONIBUS *dedidit; annuæque pecuniæ, tributi nomine pendendæ conditione sese astringit.* Here I observe, that this loss that *Donald* received gave opportunity to the *Britains* and *Saxons* their planting themselves in the *Low-lands*; the *Scots* being reforced into the *High-lands*. But concerning the limits and bounds betwixt these and the *Scots*, he gives us a particular account; and shews in what parts the one inhabited, and in what

part

part the others, and informs us that these *Angli-Saxones in hujus pugnæ memoriam, Strivelingi Arcem prius dirutam iterum extruxerunt; Fortheam quoque ponte munierunt; quo postea in loco crucem, tanquam victoriæ signum sustulerunt; cui ii versus ætatem illam satis redolentes affabrè insculpti sunt,*

Anglos à Scotis separat crux ista remotis,
Arma hic stant Brutti, stant Scoti sub hac cruce tuti.

Interea Picti, qui Scoticæ cladis Auctores fuerant, tota Albione à Saxonibus præcipites ejiciuntur; and to this *Buchanan* adds; that *duræ conditiones præpositæ, quas tamen præsens rerum status tolerabiles faciebat videri: ut omni agro qui inter vallum Severi esset, Scoti cederent; ut limites essent, infra Sterlinum, Fortha; infra Britannodunum, Glotta: inter duos amnes, vallum Severi. ANGLI enim & BRITONES agros relictos inter se partiti sunt, Glotta eis dirimente.* The *Picts* for some time, after they had in vain from their *Assistants* expected Restauration, and seeing themselves deluded, *ad Cimbros & Scandianos, (id est) ut nunc loquimur, in Daniam & Norvegiam transmiserunt.* This * *Vallum Severi* was not that Wall which reached from *Carlisle* to *Tinmouth*; But that, the *Vestigia's* whereof are to be seen, *ab Abircorno, per Glasgoensem agrum ad Cladæ fluvii ostia, ubi nunc castrum Dunbritonum situm est.* This Wall was made of Turf; without it, is at this time remaining a small Building, not very Ruinous

* *Severus* (saith *Bede*) à cæteris indomitis gentibus non muro (ut quidam estimant) sed vallo distinguendam putavit ⁊ hit begynde ⁊ ge-fæstnade mid dice ⁊ mid eonhpealle fram sæ to sæ, that is, and did girt it and firmed it with a Dike, and with an Earth-wall from Sea to Sea.

Ruinous, which the *Scots* call *Dun a paix*; which some there say doth signifie, *the Hill or Memorial of peace*; about which are still to be seen above twenty *Tumuli* or *Lowes*. (*Dun* indeed in our antient Language signifies a *Hill*, by which name the Inhabitants in and about *Dunkirk* call the adjoyning *Hills*; and the name of the *Town* from its situation among those very *Hills* takes its Denomination) But that noted remain is thought to be a *Temple* Dedicated to the *Deus Terminus*, Built by the *Romans* at their *Non plus ultra*. These are those parts of *Scotland*, inhabited by the *Saxons* and *Britains*; distinguished from the antient *Scots* (now called *High-landers* from their site among the *Hills*) by the name of *Low-landers* and *Saxons*; who setled at this time not only their Language in these parts, but their Customs also; which by my small Observation, seem most of them to be such, as were in use before the *Normans* invaded the *Southern parts* of this *Island*; and no wonder if you find through several Ages among them a succession in the *preference* of *Primogeniture*, since their *Militia's* did require it by reason of their continual Broyls. These atchievements with their Customs they maintained under a Diversity of *Kings*, both *Scots* and *Saxons*; for the revolutions were very frequent and various: Yet such I say, is the Deduction to be made from this Chapter, that if any thing proves the Tenure to be the antient one of the original Planters, the finding of it in these Corners and Angles, in these remote Islands, and in these *privileged Lands* of the *Bishops*, is the greatest argument that I can fancy or imagine. Before I conclude, I shall speak a little to some other particulars, and first of

CHAP.

CHAP. XVIII.

Villenage; the meaning of it, the antiquity thereof. Of the antient words, Clown, Pagan, Knave. Of Surnames; of Soc and Sac.

MR. *S.* In his third proposition (in his 61. and 62. *pages*) taking it for granted, that the Term *Gavel-kind* is of a *Saxon* Derivation and Parentage, fixeth its entrance into our Isle with the comming in of the *Saxons*; concerning which I have formerly Discoursed, and therefore in this place shall pass it by: Only take notice, that he deservedly Censures, and Confutes such as have laboured to fix its introduction among us, by the comming of the *Normans*; of which number Mr. *Selden* hath hapned to be one; as in his illustrations upon Mr. *Draitons Poly-olbion*; who, out of *Spot*, (St. *Austins Chronicler*) relates the Story of the *Kentish-men*, with their green Boughs, treating with the *Norman Conquerour*, with which Story many persons have been well pleased; and yet by what I understand of it, it shews rather a procurement of a Confirmation of this *Custom* among the rest, than a Creation thereof at that time. But he having sufficiently evicted the improbability of that Story, passeth in his 72. and 73. pages, to shew *Spots* mistake in averring there were no *Villains* in *Kent*; which he confutes by a Citation of an antient *MS Chartulary* in Sir *Thomas Cottons Library*; and by certain Observations out of the *Kentish Survey* in *Domesday*. The same mistake was lately among many others generally received, as that

Villenage

Villenage was the *Badge* of the *Norman Conquest*; but this I can affirm from my own Reading, that the name carried with it no such *Odium* and *Reproach* in *Elder times*, as it hath done in *later Days*. For what was *Villanus*, more than a *Villager* to such or such a *Lord*? what their *Villenage*, but their *Duties* and *custom-services* belonging to a *Village* for the *Lord's use*? So that the intrinsecal value of the word *Villain*, is only *one that inhabits or lives in a Village*. The like is of *Colonus* (a *Clown*) which is no more than one that Tills the Land: so also of *Paganus*, called in the *Saxon* Tongue * Cyrlisc, from whence came their Ceorder; now called *Churls*, which is not much different in Denomination from *Villanus*, and is one that dwells in a *Village*; and not as we take *Pagan* commonly, to signifie one that is of an *Ethnical Religion*. But to Discouse of them in order as they lye before us; *Villain* is a *Villager*, of whom, *Minshew* upon the word saith, *Galli suos rusticos & villicos proprie dicunt villaines; villanus inquit Budæus, dicitur, quod villæ adscriptus, & colonariæ conditioni, aut ipse addictus, aut majores sui fuerint; quod tamen nomen loquentium inscitia, in contumeliam jam vertit.* But Mr. *S.* out of the *Mirroir* speaks them thus; *Cultivers de fief demorants en villages uplande; car de vill est dit villeine*; but (as I said in another places) there is to be found almost in every Leaf in *Domesday-book*, not only an account of what *Villains* were in each *Mannour* at the time of that Survey; but also how many there were in the time of *Edward* the *Confessour*; and as Mr. *S.* hath observed, there is a name or two found in that Record, that hath much more of *Servility* than *Villenage* carries with

* 18. Leg. Regis *Inæ*.

with it: One of which is there termed *Servi*, and were more immediately dependant upon the Lord's will, than the *Villani* were, which were those *Nief's* or *Neif's*, they had in antient time, which were *Boundmen*, or little better than *Slaves*. Mr. *S.* is of opinion, that the *word* or *term Villanus* was not in use before the *Norman Conquest*; for in his 126th. page he saith, *as afore-time the Saxons had their Ceorles, Gebures, Folcmen, &c. so afterwards the Normans their Villani, Bordmanni, Cotarii, &c.* certainly, these three names the *Normans* found here. First for the *Bordmanni*, if that name as well as *Cotarii* be not *Saxon*, I know not what is; for the *Bordmanni* were such as lived upon the *Bordlands*, which were (according to *Bracton* *) *the Demesnes that Lords kept in their hands, to the maintenance of their Board or Table*; and *Cotarii* were *Cottagers*, such as dwelt in a *Cottage*, * (that is to say) a House without Land belonging to it, and comes from the *Saxon* word Cote, which is the same with *Tugurium* and *Tectum*, in Latin, a *Tegendo*; so as this is in signification a *Cover* or *Shelter*; because those small Habitations were only made to cover them from the *Sun* and *Weather*. I am not ignorant of that great mistake, the whole Current of Writers have run into, those whose Works have been published within these last 300 years; where they generally endeavour to load all the indignities of *Tenures* of *Servility* and *Vassalage* upon this *Norman* change. I deny not but that some were at that time introduced, especially many Jocular *Tenures*, which were the effects of private contracts betwixt the *Lord* and his *Tenants*; and not of any general concernment; but hence I cannot yield to conclude,

* Bract. Lib. 4. Tract. 3. cap. 9. num. 5.

* Anno 4. Ed. 1. Stat. 1.

clude, that all *Tenures* of *Servility* were of their introduction. Mr. S. continues in his opinion in the 104th. page, where he writes; *That Fee-simple, Fee-tayl, Fee-farm, Grand & petit Serjeanty, Escuage, Burgage, Villenage, &c. being all of the* Norman *plantation; and we by them* (saith he) *at least since their Conquest of us brought acquainted with them, &c.* perhaps those compounds might be the effect of the consultations of some of the Kings of the *Norman* race; but for the word (*Fee*) *Minshew* discourseth very well upon it, *for* (saith he) *our antient Lawyers, either not observed from whence the word grew, or at least not sufficiently expressed their knowledge, what it signified among them from whom they took it. Feudum*, (whence the word *Fief* or *Fee* commeth) *signifieth in the* German *Language*, * *Beneficium cujus nomine opera quædam gratiæ testificandæ causa, debentur*; and out of *Hotoman* (saith) that *by this name go all Lands and Tenements that are held by any acknowledgment of any superiority to any higher Lord; so is all the Land in* England (*except the Crown land*) *held, that is of Feudum or Fee: for he that can say most for his Estate, sayeth but this; Seisitus inde in Dominico meo ut de feudo, which is, I am seised of this or that Land or Tenement in my demain as of Fee; which is no more than if he should say, It is my Demain or proper Land after a sort, because it is to me and my Heirs for ever; yet not simply mine, because I hold it in the nature of a benefit from another*: and *Fee-tayl* as distinguished was not an introduction of the *Normans*, for that *Minshew* observes it to have its Original from the *Statute of westm.* 2. c. 1. which was made *Anno* 13. *Edw.* 1. The word *Feud* is used familiarly

* In like manner doth Mr. S. labour to deduce it from a Saxon original, p. 107.

hardly to this day in the *Higher and lower Germanyes*. For what concerns *grand & petit Serjeanty*, I believe the words to be French, and so introduced by the *Normans*, to expresse those Services that were due to the *Kings* of *England* before the *Conquest*; such Services being reserved by the *Saxon Kings*. The service of *Escuage* was before the *Norman Conquest*, though not known by that name; the like was of *Burgage*, which is no more than a yearly Rent, whereby men of *Cities* and *Burroms* held their Lands or Tenements of the *King*, or any other *Lord*, which was in use before the *Conquest*. Concerning *Villenage*, Mr. S. doth cite out of Mr. *Lambards Perambulation* of *Kent* in *Mepham*, under the *Term* of Agener-land, this, as a very antient passage, which had been enough to have convinced me, that there had been Villains before the *Norman Conquest*; and it is this; *Et si Villanus ita crevisset sua probitate, quod pleniter haberet quinque hidas de suo proprio allodio, &c.* and in his 114. *page* citeth an old Version of the 19. and 21. of *King Ina's Laws* of the word Geneat, which is made thereby to signifie *Villanus* or *Colonus*; and it is convicted by *Domesday Book Survey* in *Sudsexe* thus; **Radulfus tenet de Willielmo (viz. de Warene) BRISTELMESTUNE. Bricteric tenuit de dono Godwini Comitis T. R. E. & modo se defendit pro V. hid. & dim. Trā est III car. In dnio est dimid. car. & XVIII vilti, & IX Bordarii cum III car. & uno servo. De gablo IV milia allecium.**

In eadem villa tenet VVidardus de Willo VI. hid. & unam V. & pro tanto se defendit. Tres Alodarii tenuerunt de Rege Edwardo & potuerunt ire quolibet. Unus ex eis habuit Aulam & Villani tenuerunt partes aliorum Duorum. Here is an expreſs of a *Servus*, and alſo of the *Villani*, who held this Land in the *time* of *Edward* the *Confeſſour*. Beſides this, I could allege many more; but Sir *Edward Coke* upon *Littleton*, ſaith, that *Villani* in *Domeſday* are not there taken for *Bond-men*; but had their name *de Villis*, becauſe they had *Ferms*; and there did work of Huſbandry for the Lord; and they were ever before named *Bordarii*, (which is contrary to Mr. *S.* in what I cited before of him concerning *Bordmanni*, which I believe is one and the ſame thing with *Bordarii*) and ſuch as are *Bond-men* are called *Servi*. Thus Sir *Edward Coke*. But I believe the *Normans* found theſe *Villains* here, even by their name, by which I believe they were of a very antient ſtanding; for that I find them known by the *Britains* by that Title, as they are often mentioned in the Laws of *Howel-dha*; in a Law which before in this ſame I mentioned, is notice taken of a *King's Villain*; and of a *Nobleman's Villain*; and then another that gives a right to the *Foſter-children*, of dividing Land with the *Children* of the *Villein*; but a little more plainly to bring the proof, in thoſe Laws it is Demonſtrated how that *Tres homines promoveri poſſunt una die*; that is to ſay, (as I gueſs it) they are made *Gentlemen* in one day; (here you muſt take the *Latine* as I found it,) *Captivus ſi mo-*

vetus

vetus in Swyd *de* XXIV. *officialibus*: Swyd is *dignitas*, *dignity*; so that the sense of it is this; if the *Prince* bestows upon a *Captive*, the dignity of being one of the twenty four Chief officers of his Court, it is an advancement peculiar; or he becomes by it a *Gentleman*. *Secundus*, *filius villani si sit clericus* (*our common Law* doth differ from the *Civil Law*, which saith, *Partus sequitur ventrem*, where as the *Common Law* hath it, *partus sequitur Patrem*) but here provision is made that the *Son* of a *villain* being a *Clergy man* should become a *Gentleman*; which is somewhat explained by the next. *Tertius*: *Homo ex captiva villa, si villa habeat a Domino patrie licentiam Ecclesiam ædificare, & in Cimiterio ejus corpora sepeliri; tunc villa fit, & omnes homines de ea postea sunt liberi*; that is to say, perhaps they were as *servi* before, or *villani*, and now they become *liberi*. Much to the same purpose Mr. *Lambard* shews us out of an old piece of *Saxon*; where the reputation of a Thane consisted, in having among other things a Church, a Hall, a Porch, &c. which shews the cohærence of the *Saxon* Customes with the *British*; and thus by Judge *Dodaridge* (out of him) it is rendred in his Treatise of Barons, *pag.* 152. "It was sometimes in the *English* Laws, that the people "and Laws were in reputation, then were the wisest of "the people, worship-worthy in his degree, Earl and "Chorle, Theyne and under-Theyne; and if a Chorle so "thrived, that he had fully five Hides of Land of his "own, a Church, and a Kitchin, a Bell-house and a Gate, "a Seat, a several Office in the Kings Hall; then was he "from thenceforth the Theines right-worthy. And if a "Theyn so thrived, that he served the King on his mes-"sage, on his journey-ward, in his Houshold, if he then

"had

" had a Theyn, which him followed, who to the Kings " experience had five Hides, and in the Kings Palace his " Lord had ſerved; and thrice with his errand had gone " to the King, he might afterward with his fore-oath, his " Lords part play at need, and if a Thein that he became " an Earl, then was he from henceforth the Theins right- " worthy. And if a Scholar ſo thrived through Learning, " that he had degree, and ſerved Chriſt, he was thence- " forth of Dignity and Peace, ſo much worthy as there- " unto belonged; unleſs he forfeited, ſo that he the uſe " of his degree ne might. Again, among the ſame Laws, for forfeitures for burning of Houſes, it is thus provided; that for the burning of **Odin** *Regis dimid. libre. Optimatis* LX. *den. Villani Regis* XXX. *den. Villani Optimatis* XXIV. *den. hoc de illis eſt intelligendum qui* **Ofen** *habent, de aliis tercia pars pretii cadit.* For the underſtanding whereof that *Odin* is tranſlated *fornax*; which in this place ſignifies a **Kilne** wherewith to make *Malt*, becauſe that **Ofen** ſignifies a *Kilne-hole*; the burning of which ſorts of *Kilne* is that which is here meant; which unleſs it hath a *Kilne-hole* the third part of the preſcribed forfeiture decreaſeth. That which I cauſe it to ſhoot quite blank againſt, is the opinion of no *Villeines* before the *conqueſt*, which this Law ſhews to the contrary; in giving you an account of ſuch even at this time of the Collection of theſe Laws; *Kings-villeins* and *Noblemens-villeins*. In another Law it is, that, *Si filia Villani eat in rapinam cum aliquo; poſtea ab eodem ſit repudiata, reddat* 6 *animalia tria ſupradicte etatis*; another Law provides what the *wife* of a *Nobleman* might beſtow without her *Huſbands* conſent; and what ſhe might lend without his conſent; But enacts that,

that, *uxor Villani nichil potest dare sine licentia Villani; nec mitram; nec aliquod accommodare nisi cribrum tam longe, quod vox ejus posset audiri stans in limine domûs sue dum clamat propter illud.* All these Laws are of several concernments; but do all expressly prove *Villenage* above one hundred years before the *Norman Conquest*, and so by what I have said before concerning the Laws of *Howel-dda*, probably to be an antient *British* usage. For the word *Clown*, thought to be derived from the *Latine* word *Colonus*, from whence also is the British word Alun; And is the same with the *Dutch word* Boer, which by a syncope is used for *Bouwer*, from the word *Bouwen* (*id est*) *arare, colere agrum*, as *Minshew* hath it; what reproach could there probably be in that denomination? yet now what ignominy doth it carry with it? The like may be said of the last which is called *Paganus* in Latine, but in English *Pain*, which became a Surname to a family, and a Christian name to several great persons. But *Minshew* hath this Story of the Original of the Name, which carries in my Judgment no great store of probability with it; but as it is I will transcribe it; under the word *Pagan* (he saith) *A Judæis deflux. si mos hic & appellationi videtur; cum enim inter Judæos Hierosolyma tantum civitas erat, nullisque nisi Judeis ad illam dabatur accessus; reliqui omnes Hebræis erant Pagani, in pagis, quasi extra civitatem & populum Dei constituti*; & out of the eighth book of *Isid.* he brings another story much to the same purpose. *Pagani, inquit, ex Pagis Atheniensium dicti, ubi errores sunt; ibi enim in locis agrestibus & Pagis gentiles lucos, idolaque statuerunt; & a tali initio vocabulum sortiti sunt.* I am perswaded that *Paganus* comes from *Pagus*; but I find that

that Cyplise the *Saxon Pagan* had greater *Priveleges* than a *Villain*, for that he was bound to military services; as in the 52d and 64th. *Laws* of *King Ina*, which for brevity sake I shall pass by; only take notice that of all such denominations there hath risen terms of disgrace, which were not so, in the first usage thereof; so is it familiarly given to us, concerning the common denomination of the *Term Knave*; which is a word taken from the *Britains*, who called a Houshold servant, or rather such a one as attends upon the person of another, in their Language Knaf, and is also one that is not yet properly said to be a man, but is betwixt a boy and a man. In the sense of a *servant* it is used in *Stat.* 1. *cap.* 3. *An.* 14 *Ed.* 3. but in its corruption, and as it is now received it is a word of great disgrace, and expresseth one that falsifies his trust. In an old *Obit book* that I have, formerly belonging to the Church of *Hereford*, there is mention of a *benefactor* called *Simon Gods-cnave*; from whom I believe at this day a certain place in the City of *Hereford* is called *Gods-knave-inne*; which certainly hath no more in the signification, than, *the Servant of God*. By this we see, that from such like words and denominations as these are, Surnames were derived; though it may now seem strange to us to meet with such appellations; it appears that they were not so curious of procuring excellent ones to transmit to their posterities; but accepted of any serious or jocular; some from shapes of body; others from qualityes of the mind; some from Trades, Offices, &c. But I cannot let that pass without

MS. Obit. Eccles. Heref penes Authorem. *Paul* in our elder Translation is rendred the Knave of Jesus Christ, to express that which we now read the Servant of Iesus Christ.

out notice, which for a Surname I met with in the ſecond volume of *Domeſday*, in the *Survey* of the *County* of *Eſſex*, being there Regiſtred as one of the *Trãs Tenentes* of that County, where it is thus Recorded; * **Terra Rogeri Deus ſalvet Dominas.** But I have done with the *Tenure* of *Villenage* and the antiquity thereof; of the uſe and abuſe of antient denominations and appellations I ſhall only add one or two words; as a mite caſt into Mr. *S's.* Treaſury; which is by way of approbation of what he hath learnedly diſcourſed concerning *Sok* and *Sak*, evicting that common received opinion which makes it ſignifie the *ſervice of the Plough*: But *Minſheu* upon the word ſaith, that *Soca is a word ſignifying a power or liberty of Juriſdiction, as appeareth by theſe words out of Bracton; ſunt quidam Barones, & alii libertatem habentes, ſcil.* Soc & Sac. Tol & Thean. Infangtheſe & utfangtheſe; *& iſti poſſunt judicare in curia ſua eum qui inventus fuerit infra libertatem ſuam, ſeiſitus de aliquo latrocinio manifeſto.* The ſelf-ſame interpretation doth Mr. *Lambard* give it in his Tranſlation of the *Saxon-laws*; for amongſt the reſt in thoſe of *King-Ina*, Be cynic rocnum is rendred, *de immunitate fani*; and in the *Laws* of *Henry* 1. it is ſaid, *Nullus enim Socnam habet impunè peccandi*; that is, no one *hath liberty of ſinning without puniſhment*. In the *ſecond* of *King Alureds Laws*, Be cynicena rocnum is by the interpreter rendred *de immunnitate Templi*; ſo likewiſe in the Laws of *King Edmund* Hamrocna or Hamrocnum

Leg. 24.

* The Land of *Roger God ſave the Ladyes*, for the word *Domina*, ſaith Iudge *Dodaridge* in his Treatiſe of the Barons, *pag.* 151. ſignifies Ladyes or Dames, ſo women after fourteen years of age were called *Dominæ*; as alſo thoſe which were antiently navigeal women, (*in earneſt that's a hard word*) and by our Engliſh Poets, Dames, &c. *ſed vid. Seldens* Titles of Honour, 1 part. fol. 53.

nocum is translated there *immunitas domûs*; the priviledges which men take themselves to have, in their own houses; for that every mans house was his Castle. In the said sense it is, that I understand it in *Domesday* to be received; for in *Essex* under the *Title* of *Terra Rogeri Bigoti* (which is in English I think, The Land of *Roger the Zealous*) it is thus Recorded, **Westunam tenet Hugo de Hosdene quod tenuerunt IV liberi homines *T. R. E.* qui fuerant de Soca Algari, &c.** *Sac* (*Sacha vel Sacca*) *Minshew* renders, to *signifie a Royalty or privilege touching plee or correction of Trespasses of men within a Mannour*; and saith, *that he was informed that this word* (*Sac*) *in the Saxon Tongue, doth properly signifie as much as* (*Causa with the Latines*) *Sake*; *whence we in English still retain that expression*; *for whose sake, &c. that is for whose cause*; but in the *Laws* of *Edward the Confessour* they are both of them thus expounded.

☞ *Sacha est quod si quilibet aliquem nominatim de aliquo calumniatus fuerit; & ille negaverit, forisfactura probationis vel negationis* (*si evenerit*) *sua erit.*

☞ *Soca est quod si aliquis quærit aliquid in terra sua, etiam furtum, sua est justitia si inventum fuerit, an non.*

I shall also exhibit an Exposition of them both, out of a very antient *MS book*, in which are *Registred several Donations* to a *Cathedral Church* in *England*; where after the recital of a certain *Charter* granted by *Edward the Confessour* to them, *Cum Saka & cum Sokna*; there follows an *Exposition* of them both, in *red Letters* thus.

MS. Penes Autorem.

☞ *Equitur*

6 Equitur expositio illorum Terminorum Soka & Saka.

6 Oka. hoc est Secta de hominibus in curia vestra secundum consuetudinem regni.

6 Aka. hoc est placitum & emenda de transgressionibus hominum in Curia vestra.

The first is only the *Sute* of *Court* due by the inhabitants of a *Lordship* or *Mannour*, and *Sac* is the *liberty of Holding Pleas* and *imposing Mulcts* and *forfeitures upon Transgressors* in that *Court*. M^r. *S.* hath learnedly discourſed this and the Etymologye thereof; and becauſe not in controverſie I will not therewith further trouble the *Reader*. I am now come to the end of this immethodical diſcourſe, and deſire his pardon, and acceptance of the intention for the thing done: for I could wiſh if this ſubject ſhould prove pleaſurable or delightfull to any, that it had been better ordered, and clothed in better ſtyle and language. But now, *jacta est Alea*: it muſt take its fortune, and paſs under the cenſures of many; ſome will except againſt the boldneſs of the Author, in that he is not afraid to Queſtion received opinions and to examine the *ipse dixit* of the *Law*; I hope ſuch cannot ſay that it was immodeſtly or irreverently done: ſome will think it too long; others perhaps too ſhort; many to be needleſs; ſo perchance it may fall out that I may eſcape with the Countrey Prieſt, who coming to a village of Husbandmen, that had newly buried their Paſtor; and over-hearing them complaining that he had not by his Prayers procur'd them rain or fair weather according to their occaſions. The ſtranger thereupon offers unto them, that if they would

would procure him the Benefice, he would satisfie them in that point; which being obtained, several of them came to him, some for continuance of fair weather, others for some showrs of rain to refresh their almost burnt-up grass; and every one according as they were ingaged in their several necessities and requisites of Husbandry: He told them he could not at the same time obtain fair weather and rain, but if they would agree together, then he would content them. If any carpingly disposed, stumble upon this Tract; I shall only desire them to meet, and agree upon their verdict, and I then will undertake to please them. To the Ingenuous, I have this only to add; let Them accept of it as either an Essay, or under any other Title, or denomination whatsoever, and I have done.

Errata.

Pag. 5. *line* 7. *for* Hellai *r.* Hellas. *l.* 24. vagerentur *r.* vagarentur. *p.* 22. *l.* 2. *for* Drympeck *r.* Drympenocke. *p.* 70. *l.* 25. *read* biſceoꝛ. *p.* 77. *l.* 25. *read* offensive. *p.* 78. *l.* 12. *for* Scrâp *r.* Scrûp. *p.* 94. *lin. ult. for* Countries *r.* Counties. *p.* 130. *l.* 20 *for* ʒiꝑ *r.* ʒiꝑ *p.* 157. *l.* 10. *read* The changes are very, &c Some literal escapes a judicious Reader may encounter, which are easily amended with his pen.

In the Latine.

Pag. 208. line 12. *for* Gemmetiam *read* Gemeticum. *p.* 209. *l.* 22 *for* Deurons *read* Deurous.

BREVIS RELATIO
DE
WILLELMO,

Nobiliſſimo Comite Normannorum, Quis fuit & unde Originem duxit, &c.

Ab Authore Anonymo,
Temp. Hen. Primi.

LONDINI,
Typis *Guil. Wilſon* pro *Johanne Starkey*, apud quem proſtant vænales ſub Signo *Mitræ* in Vico vulgo dicto *Fleet-ſtreet*. 1663.

BREVIS RELATIO
DE
WILLELMO,

Nobilissimo Comite Normannorum, Quis, aut & unde Originem duxit, &c.

Ab Authore Anonymo,
Temp. Hen. Primi.

LONDINI,
Typis Guil. Wilson pro Johanne Starkey, apud quem prostant venales sub Signo Mitre in Vico vulgo dicto Fleet-street. 1663.

Dignissimo *Henrico Norwood* uni Armigerorum pro corpore Caroli Secundi Regis Angliæ, &c. & Amœnæ Coloniæ *Virginianæ* Thesaurario, &c.

Vir Amplissime,

Tam erga me beneficentiam, licèt pensare nequeam, lubens tamen recognosco; in Magnis *quippe* voluisse Satis. *Libellum hunc* Nomini *Tuo mihi Honorato perinde & charo inscribere ausim. Inter Quisquilias justò diutius Blattis & Tineis damnatum, fortuitò inveniens; tandem emancipavi. Vetus hujus* Anonymi Authoris MS. *in* Archivis Bibliothecæ publicæ Oxonienſis (*prece tamen* CL. V. D. BARLOW) *quatuor aut quinque virtutibus ab hinc retro annis sepositi; Quod patrocinio tuo simul ac luce jam primum gaudet: Nihil illi subtraxi, nihil illustrationis penè addidi, nihil denique præter transcribendi curam mihimet arrogo. Argumentum minimè vulgare continet, Genium mihi quamvis Monasticum videtur redolere; verbis enim nonnullis obsoletis, & Nugis (quamquam paucis) coinquinatum*

est: veruntamen quia Tractatui præeunti Tædam quasi præfert, comitem eidem & socium manumissione liberum reddidi. (irca medietatem Regni Henrici Filii Gulielmi Angliæ Conquestoris, (*uti suspicor*) *compositum & collectum erat; ut patet ex animadversionibus de captivitate* Rodberti *fratris ejus, cum* Comite Moritonii, *è* Normannia *in* Angliam *ducti & incarcerati: sub fine enim hujus libelli de eis scriptum est:* EOSQUE ADHUC in captione tenere decernit; *& paulò inferiùs:* HIC est autem status Angliæ & Normanniæ AD PRESENS: quæ autem posthæc in his Terris futura sint; Posteritas videbit. *Insuper; ut Animi mei specimen, in hujusmodi venerandarum reliquiarum (Diù nimis temporum injuria neglectarum) à Tenebris vindicatione, exhibeam; hoc pignus & Arrham libenter tradidi. Interim vale: ejusque votis fruere; cui nihil est antiquiùs quam ut vivere possit,*

Tui favoris studiosissimus

Silas Taylorius.

IV. ID'. Mart.
MDCLXII.

INCIPIT

Quedam Brevis Relatio de

WILLELMO

Nobiliſſimo Comite

NORMANNORUM;

Quis fuit, & unde Originem duxit;

& Quis erat ----------

---------- *ſibi Armis adquiſivit.*

PATER hujus *Willelmi* fuit *Rodbertus* Dux *Normannorum*, vir omni probitate conſpicuus; erga ſuperbos ferus: ſed erga pauperes largus atque Pius. Sed quamvis erga omnes pauperes miſericors & pius, maximam vero compaſſionem ſemper habebat de his quos *Elefantioſus* morbus vexabat: ita ut ipſi *Elefantioſi* ſepius eum fratrem vocarent ob nimiam

miam pietatem quam de miseriis eorum habebat. Hic autem *Rodbertus* sic quidam dictus Dux *Normannorum* extitit in quinta Generatione ab illo *Dano* qui *Rollo* vocatus, Terram que modo vocatur *Normannia* armis cepit. Ab isto itaque *Rodberto* Comite viro tam nobili, tamque pio egenis, progenitus est iste *Willelmus* de quo loqui instituì. Dilexit autem eum pater suus multum, partim quia nullum habebat filium nisi illum, partim quia secundum suam etatem idem filius suus multum erat strenuus atque decorus.

Eodem vero tempore *Rodbertus* comes mente compunctus, fecit votum eundi in *Jerusalem*, & videre locum illum; ubi *Dominus* suus crucifixus fuit mortemque pro peccatoribus sustinuit.

Paratis itaque omnibus que ad hujus itineris negotium pertinebant; antequam de *Normannia* recederet, congregari fecit Barones *Normannie*, eisque commendavit *Willelmum* filium suum ut nutrirent & custodirent illum, donec sciret & posset Terram tenere & regere: Eum enim heredem faciebat post se de terra *Normannie*, ut si casu aliquo ipse non rediret, & filius suus *Wills* in paterna hereditate sine ulla contradictione succederet.

Dispositis ergo omnibus que illius vie necessitas poscebat, & commendato *Willelmo* filio suo Baronibus suis; quem heredem de *Normannia* faciebat, profectus est *Jerusalem* Comes *Rodbertus*: sed cum inde rediret: in urbem que vocatur *Nica* diem clausit extremum; in quo loco honorifice sepultus est: & sicut quidam retulerunt, ad sepulchrum ejus quedam signa virtutibus similia conficiuntur.

Libet vero memorie mandare quoddam signum bonitatis

tatis *Rodberti* Comitis quod vice quadam in ipsa via ..... his ..... qui cum illo ibant ostendit, ut ex hoc uno patenter cunctis manifestum sit, quam humiliter injurias que ei fiebant pro amore Dei pertulit.

Quadam namque die contigit eumque venire ad quendam locum ubi *Musellas & Tributum* debebat pro se & pro pauperibus qui in ejus comitatu erant, persolvere; Dum itaque ibi cum suis hominibus expectaret donec omnes pauperes quos secum ducebat transire fecisset; quidam de paganis qui eas Musellas accipiebat, iratus contra eum arreptoque fuste fortiter super dorsum percussit illum; homines vero illius videntes quid *Rodberto* Comiti paganus fecisset; mox illum voluerunt percutere, & percutiendo Dominum suum vindicare. *Rodbertus* vero Comes non parum letus de injuria quam pro Dei amore susceperat, compescuit suos homines; eisque dixit: Nichil mali ei faciatis, *quia per animam ventris mei* magis sum letus de ista dorsata quam mihi dedit; quam si mihi magnam pecuniam dedisset.

Ut ergo ad id unde digressus sum redeam; Barones *Normannie* ut audierunt *Rodbertum* Comitem esse defunctum, non parvas injurias *Willelmo* filio suo facere ceperunt. *Willelmus* tamen Juvenis non diffidens de adjutorio & misericordia Dei; sicut melius poterat secundum tempus quod tunc erat, se in omnibus habebat; ad ultimum vero postquam vidit, quia *Normanni* hereditatem suam ei auferre volebant, assumptis secum quibusdam *Normannis* qui ei fideles erant, contulit se ad Regem *Francie*. Sed quam citius potuit in *Normanniam* rediens, in loco qui dicitur *Valesdunes* contra

Normannos

Normannos illos qui eum exheredare volebant, pugnavit: quos & ibidem Dei auxilio fretus pugnando ſuperavit. Quibus devictis & in fugam ire, in brevi poſt hec totam hereditatem ſuam quam ei auferre conati ſunt ex integro recuperavit: Deinde aliquanto tempore decurſo accepit in conjugio filiam *Balduini Comitis de Flandria*, nomine *Mathildam*, mulierem multum honeſtam & ſapientem, ex qua plures filios & filias generavit.

Quis vero facile referre poſſit toto illo tempore quo ſuper *Normannos Willelmus* Comes dominium tenuit; quam ſtrenuè, quam ſapienter in omnibus ſe habuit; quos enim bonos & honeſtos videbat, cujuſcunque ordinis eſſent non parum diligebat, quos autem criminoſos & inhoneſtos eſſe audiebat à conſortio ſuo ſemper fugabat. Eo itaque tempore dum *Willelmus* Comes ſic ſtrenuè & prudenter regnum ſuum gubernaret, atque undique per circuitum terram ſuam viriliter protegeret, contigit ut *Heraldus* filius *Goduini* de *Anglia* navigare vellet in *Normanniam*, ſed in terram que vocatur *Ponteium* devenit; Quem *wido* Comes ejuſdem patrie cepit & in cuſtodia tenuit, donec induſtria *Willelmi* ſapientiſſimi Comitis *Normannorum* eum liberavit, quem liberatum & ante ſe adductum, idem Comes honorificè ſuſcepit, & ſuſceptum aliquanto tempore cum magno honore ſecum retinuit.

Interim vero dum cum eo converſatus eſt; ei homagium & fidelitatem fecit *Heraldus*, & etiam ſicut dicunt multi tria ſacramenta ſuper *FILACTERIUM* quod vocabant *OCULUM BOVIS*; quod ei fidem & promiſſionem quam ei faciebat, bene cuſtodiret. Peracto itaque negotio propter quod *Heraldus* venerat in *Normanniam*

mannian; quam citiùs potuit rediit in *Anglian*; poſt aliquantum vero temporis dum *Edwardus* Rex *Anglorum* in Natali Domini feſtivitatem coronæ ſuæ *Lundoniæ* apud *Weſtmonaſterium* ageret; contigit ut tactus graviſſima infirmitate vitam preſentem finiret. Dicunt autem quidam, quod tunc *Heraldus* quaſi oblitus ſacramentorum que *Willelmo* Comiti in *Normannia* fecerat antequam Rex *Edwardus* Obiret, ad eum venit; cum rogavit ut ei coronam Regni *Anglie* concederet; Quo audito Rex *Edwardus*, non immemor quod *Willelmo* Comiti *Normannorum* cognato ſuo regnum *Anglie* jamdudum conceſſiſſet, reſpondit *Heraldo* hoc nullo modo ſe poſſe facere, quia inde *Willielmum* Comitem *Normannorum* Heredem fecerat. Veniens vero Rex *Edwardus* ad finem ſuum, diem clauſit extremum.

Adhuc autem erat corpus ejus ſuper terram ſicut illi poſtea retulerunt qui hoc ſe videre dixerunt, cum *Heraldus* quaſi inſanus, atque proponens quicquid *Willielmo* Comiti de Regno *Anglie* juraverat, videlicet quod ei fideliter illud poſt mortem Regis *Edwardi* ſervaret, conſentientibus ſibi Civibus *Lundonie*, multiſque aliis inſanie ejus faventibus; apud *Sem Paulum* in civitate *Lundonie*, contra omnem rectitudinem coronam Regni *Anglie* arripuit. Non longum vero tempus fuit, quod iſte Rumor ad aures *Willielmi* Comitis *Normannorum* pervenit, quod cum audiſſet & pro certo didiciſſet, quod *Heraldus* in omnibus que juraverat ei perjurus eſſet; quam citius potuit Barones *Normannie* ad concilium convocari fecit; eiſque oſtendit quomodo *Heraldus* coronam regni *Anglie* ſibi impoſſuiſſet, de quo Rex *Edwardus* cognatus ſuus eum Heredem feciſſet, & quomodo etiam idem *Heraldus* de ſacramentis que ſibi in

Normannia fecerat : ut perjurus modo existeret. *Normanni* autem hoc audito, non parum irati de tanta contumelia, quam *Heraldus* Domino illorum & sibi fecisset, communiter ei consilium dederunt, ut de *Heraldo* perjurio suo se vindicare procuraret, coronamque illum injustè ademptam, si aliter non potuisset, per bellum saltem restitueret. Quo consilio suscepto, precepit ut quam citius possent, omnes Barones *Normannie* unusquisque secundum suam possibilitatem naves *preparaverit*, quibus ipse & omnis militia quam secum ducturus esset in *Angliam* transvehi posset : Quas in valdè breviori spatio quam unquam sperari posset, preparatas adduci precepit ad Sctum *walericum* in *Summam* que juxta illud fluit.

Dispositis itaque omnibus que ad hujusmodi negotium pertinebant, eisdem navibus conscensis, Anno ab incarnatione *Domini Millesimo, Sexagesimo, Sexto*, IIII° Kal. Octobris ; cum magna alacritate animi *Willelmus* Comes transiens in *Angliam* appulit Deo favente ad Castrum quod vocatur *Pevenesel* ; sed *non* diutius ibi moratus ; cum omni exercitu suo venit ad alium portum non longè ab isto situm ; quem vocant *Hastingas* : ibique omnem suam militiam requiescere jussit.

Interim vero dum ibi Comes *Willielmus* cum exercitu suo esset, terramque *Anglie* ex illa parte invaderet, Nuncius ab *Anglis* ad *Heraldum* concitè missus est ; qui eo tempore contra fratrem suum perexerat ; qui in altera parte *Anglie* cum magna multitudine pugnatorum intraverat : volens *Angliam* super *Heraldum* fratrem suum conquirere & conquisitam possidere ; Pugnans verò *Heraldus* cum fratre suo, interfecit eum, & eos qui cum illo venerant. Non parum itaque exultans *Heral-*

dus

dus de hac victoria, ignorabat quid in brevi ei eventurum erat : cum ergo audiſſet quod *Willielmus* Comes *Normannorum* cum exercitu in *Angliam* tranſiſſet, quam citiùs potuit *Lundoniam* venit : ibique loquens cum *Anglis & Danis* quos ſecum habebat, contemnens & pro nichilo ducens quicquid *Willielmo* Comiti in *Normannia* juraverat : juſſit omnes ſuos homines citiſſimè preparari, ut *Normannos* cum Duce ſuo *Willielmo* antequam de *Anglia* fugerent, invenire poſſet ; putabat enim inſania plenus, quod *Normanni* non auderent eum expectare, nec ad pugnam contra eum venire.

Sed aliter contigit, & non ſolum *Normannos* invenit, ſed pugnando contra *Normannos* expertus eſt, quod *Normanni* non propterea in *Angliam* tranſnavigaſſent, ut inde fugere vellent.

Heraldus itaque cum omni exercitu ſuo exiens de *Lundonia*, pervenit uſque ad locum qui nunc vocatur *Bellum* ; antequam vero ad hoc Bellum perveniſſet, fertur dixiſſe, quod nullam rem unquam amplius libentiùs feciſſet, quam hoc, quod ad hoc Bellum veniebat. Ignorabat enim furore cecatus, quia verum eſſet quod Scriptura dicit : ante ruinam exaltatur cor ; ante ruinam enim exaltatum eſt cor *Heraldi* inſani : qui tam inſipiens & vanus fuit, ut providere & ſapienter intelligere non poſſet, quod omnipotentis Dei juſticia ſuperbos & vanos, niſi a maliciis ſuis reſipiſcant, ſemper humiliare & ad nichilum deducere ſolita ſit.

Poſtquam vero Comes *Willielmus* & *Normanni* pro certo intellexerunt quod *Heraldus* perjurus contra eós ad pugnam veniret, & veniendo ſe auderet preparare, preparaverunt ſe, & ipſi ut melius potuerunt, ex toto corde invocantes Dominum ; ut eis nunc adjutor

 eſſet ;

esset; nec eos propter peccata sua, in tante necessitatis articulo despiceret.

Pervenientes itaque usque ad collem unum, qui erat a parte *Hastingarum* contra illum collem in quo erat *Heraldus* & exercitus ejus; ibi ut erant armati, paulisper substiterunt intuentes *Anglorum* exercitum. Dignum est autem ut memorie litterisque tradatur unum verbum, quod Christianissimus Comes *Willielmus* cum lorica sua indueretur, dixisse fertur: cum enim ei quidam eandem loricam suam porrigeret, ut ex ea se indueret, ex improviso ei illam inversam porrexit; quod ille animadvertens, vultu placido, quietoque animo, militibus qui in circuitu ejus erant, dixit: Si ego in sortem crederem; hodie amplius in Bellum non introirem: Sed ego nunquam sortibus credidi, neque Sortiligos amavi; in omni enim negotio, quodcunque agere debui, Creatori meo semper me commendavi. Hoc dicens, atque in Creatorem suum sicut semper facere solitus erat totam suam fiduciam ponens, induit se armis suis. Armatus itaque, & se & totum exercitum suum Domino commendans; cepit inquirere a quodam milite qui juxta eum erat, ubi *Heraldum* putaret esse: Respondit autem ille; quod putabat illum esse in illo spisso agmine, quod erat ante eos in montis summitate; nam sicut putabat *Heraldi Standartum* ibi videbat: Tunc *Willielmus* Comes fertur dixisse, credo in Omnipotentis Dei misericordia, cujus judicia etsi sunt occulta, sunt tamen justa: qui hodie justitiam faciet mihi de *Heraldo* qui perjurus existens hodie contra me audet venire ad pugnam. Hec dicens; Equum super quem sedebat calcaribus urgens; super *Anglos* irruit: unumque ex illis percutiens interfecit. Non mul-

to verò post quidam cuneus *Normannorum* fere usque ad mille equites ex altera parte *Anglos* invadentes, super illos cum horribili impetu currere ceperunt, quasi illos percutere volentes; sed dum illi usque ad illos pervenissent, quasi timerent eos, fugere se simulaverunt. *Angli* verò illi, putantes eos vere fugere, ceperunt post eos currere; volentes eos si possent interficere: quod videntes *Normanni* qui erant cautiores bello quam *Angli*, mox redierunt, atque inter illos & agmen unde se disjunxerant, se immiserunt; omnes illos mox interfecerunt, atque hoc modo *Northmanni* & *Angli* invicem pugnare ceperunt: pugnantes itaque toto illo die fere usque ad vesperum *Northmanni* cum *Anglis*; tandem *Angli* victi fugerunt, et qui fugere non potuerunt, extincti ibi remanserunt.

Interfectus est autem in illa pugna *Heraldus*, & duo fratres ejus, & cum eis maxima pars de nobilitate *Anglorum*. Facta autem est hec pugna, *Bridie idus Octobris* in eo loco ubi *Willelmus* Comes *Northmannorum*, postea vero Rex *Anglorum* Abbatiam construi precepit; ob memoriam hujus victorie, & absolutionem peccatorum omnium illorum qui ibi interfecti sunt. Victis vero *Anglis*, ad castra sua *Willelmus* comes rediit, maximas Omnipotenti Deo gratias reddit, qui ei per misericordiam suam victoriam concessit de inimicis suis. Non diutius vero ibi commoratus, versus *Lundonium*, principalem Civitatem *Anglie* cepit ire; & sic ipsam terram *Anglorum* conquirere. Deinde ad eum paulatim ceperunt venire *Angli* plurimi, & cum eo pacem facere; In brevi itaque cum eo majori parte *Anglorum* pacificata, fidelitatem illorum suscepit; & quibusdam eorum suas terras reddidit, quibusdam vero non reddidit; eo quod illis nondum se bene credidit.

Tandem

Tandem ad Natiuitatem Domini *Lundoniam* conuenientibus *Francis & Anglis*, aliisque omnibus concedentibus, coronam totius *Anglie*, & Dominationem suscepit. Constitutus itaque sapienter & cum magna discretione Regnum quod acceperat, disponere cepit; atque in Ecclesiis *Anglie* in quibus pastores non erant, pastores secundum *Dominum* ponere curauit. Deinde post aliquantulum temporis Uxorem suam de *Northmannia in Angliam* venire fecit, at Reginam de Comitissa esse constituit; illaque jam Regina filium genuit, quem *Henricum* vocari fecit. Quapropter sicut postea multi dixerunt, justum fuit ut ipse Rex *Anglie* post patrem suum fuisset, qui de patre Rege & matre Regina genitus extitisset.

Post hec autem *Willielmus* Rex non immemor quam misericordiam de Regno *Anglie* sibi *Dominus* fecisset; cogitauit quia *Dorobernensem* Ecclesiam in honorem Christi ab antiquo tempore constructam, que principatum & auctoritatem super omnes Ecclesias *Anglie* tenebat, secundum voluntatem Dei disponere: Proinde non parum inde cogitans si in regno suo inueniret cui *Dorobernensem* Ecclesiam utiliter committere posset; tandem inuenit *Lanfrancum* Abbatem Cenobii *Sci Stephani Cadomi*, virum valde religiosum, & omni probitate consputum, & non solum de his que ad honestatem & ad Deum pertinent; sed etiam de his que secularia requirunt prudentem & cautum.

Mittens itaque propter illum in *Normanniam* fecit eum uenire in *Angliam*; eique consensu & consilio omnium Baronum suorum, omniumque Episcoporum, & Abbatum, totiusque populi *Anglie* commisit ei *Dorobernensem* ecclesiam, ut eam sicut melius sciret & posset,

secundum

ſecundum voluntatem Domini, & utilitatem plebis cujus curam ſuſcipiebat, regeret. Quam utiliter vero ipſam Eccleſiam gubernavit quamdiu vixit; & quantum in ejus tempore ipſa Eccleſia eſt elevata; que per incuriam Anteceſſorum non parum erat vilis & abjecta, & fere ad magnam inopiam redacta, omnes qui tunc fuerunt, noverunt. Preter hec autem non eſt ſilentio pretercundum quod largus fuit & erga homines ſeculi & erga pauperes Chriſti, & quomodo ipſe exemplo ſue largitatis in *Anglia*, multos ad Elemoſynam accendit: propter largitatem itaque animi ejus dicebant quidam, eum merito vocatum eſſe *Lanfrancum*; id eſt ferentem cor largum, eo quod largus & bonus erga omnes homines fuit. De Rege vero *Willielmo* & *Lanfranco* Archiepiſcopo dicebant homines qui tunc vivebant, quod tales duo ſimul in una terra non inveniretur quales eſſent Rex *Willielmus* & *Lanfrancus* ſuus Archiepiſcopus.

Sed ut jam de *Lanfranco* dimittam, & ad ea que de bona Rege *Willielmo* cepi, redeam: Rex *Willielmus* ut vir prudentiſſimus, Deumque valde amans, in omnibus que & ſecundum Deum & ſecundum ſeculum agere diſponebat, divinum ſemper auxilium requirebat; omneſque quos bonos & religioſos intelligebat non parum ſemper diligebat, quos autem prave agere vel turpiter vivere omnino deſtruebat, & niſi a Maliciis ſuis reſipiſcerent & honeſtatem diligerent, etiam de Regno ſuo expellebat. Sed quicquid feciſſet de aliis malefactoribus, hereticos & quos exurgere videbat contra uſum & auctoritatem ſcē Eccleſie omnino deſtruebat.

Ejus enim tempore expulſa eſt de *Northmannia*, que quoſdam ibi maculaverat clericos, Hereſis *Berengarii*, *canantis* auferre veritatem corporis & ſanguinis Domini.

ni. Sed quis posset referre vel scribere omnia bona que bonus Rex *Willielmus* fecit, omnemque exaltationem sancte ecclesie, que quamdiu ille vixit, in regno ejus duravit?

Quicquid vero fuisset in aliis regnis, in regno ejus pax semper fuit; nec erat ullus tam fortis vel potens, qui pacem quam in terra sua posuerat, auderet infringere: vel si infringeret, in ea remanere. Nulla enim alia redemptio de illo esse poterat, qui pacem vel *Treviam* Terre illius violasset, nisi ut exinde exiret. Quamdiu itaque vixit carus & amabilis omnibus bonis hominibus fuit. Vixit autem postquam coronam Regni *Anglie* suscepit viginti & uno anno, quibus expletis presentem vitam finivit in *Norhmannia* apud *Rotomagum* IIII^to^ Idus Septemb. Antequam vero finiret, fecit heredem de *Normannia Rodbertum* filium suum. De *Anglia* autem *Willielmum* alterum filium suum; qui quam citius potuit in *Angliam* transiens; post concessionem patris, susceptus ab *Anglis* & *Francis*, Sacratus est Rex *Anglie* a *Lanfranco* Archiepiscopo *Lundoniam* apud *Westmonasterium* in Ecclesia *Beati Petri Apostoli*. Filio autem suo *Henrico* dedit Rex *Willielmus* cum ad mortem venit, quinque mille libras de Anglicis denariis.

Defunctus autem Rex *Willielmus* sicut ordinaverat, *Cadomi* translatus est; Sepultus ante majus Altare in Ecclesia beati *Stephani Prothomartyris*; quam ipse construxerat a fundamentis. Fuit autem post hec non parva discordia inter *Rodbertum* Comitem, & *Willielmum* fratrem suum Regem *Anglie*. Tunc *Henricus* remansit in *Norhmannia* cum *Rodberto* fratre suo qui dedit ei quandam terram in *Norhmannia*, sed non diutius inde gaudium habuit. Non parvo post tempore, inventis quibusdam

busdam vilibus occasionibus ei illam abstulit. Post hec autem aliquanto tempore transacto; concordiam ad invicem fecerunt *Willielmus* secundus Rex *Anglie* & *Rodbertus* Comes *Normannie*: & cum frattem suum *Henricum* debuissent adjuvare, eique providere, ut honorabiliter inter illos sicut frater eorum & filius Regis posset vivere; non hoc fecerunt; sed de tota terra patris sui expellere conati sunt: Sed quamvis inde multum conati fuissent, tamen non potuerunt facere sicut voluerunt: sed contra voluntatem eorum tenuit castrum quod vocatur *Dasfrunt*, quod non parva industria ceperat, nec postquam illud captum habuit, ei ulla vi auferre potuerunt: *Dominus* vero sicut multis visum est adjuvabat *Henricum*; de quo postea disponebat de tota *Anglia* & *Normannia* heredem facere & Dominum.

Contigit vero postea ut *Rodbertus* Comes *Normannie* *Jerusalem* iret. *Normanniamque* totam fratri suo *Willielmo* Regi *Anglorum* invadiaret, & tunc *Henricus* fratri suo Regi *Anglorum* omnimo se conferret atque cum eo ex toto remaneret. Dum itaque cum eo esset, post aliquantum temporis contigit ut quadam die Rex *Willielmus* venatum iret; ibique nescimus quo judicio Dei, a quodam milite sagitta percussus, occubuisset: Quem statim *Henricus* frater suus *Wintoniam* deferri fecit; ibique in ecclesia *Sancti Petri* ante majus Altare sepulture tradidit. Quo sepulto *Lundoniam* venit, atque apud *Westmonasterium* annuentibus cunctis, *Francis* & *Anglis* coronam regni *Anglie* suscepit; cunctique letati sunt quod modo Regum *natum* de Rege & Regina, natum & nutritum in *Anglia* habere meruissent; Ordinatus sicut meminimus per voluntatem Dei *Henricus* *Anglorum* Rex; cepit magnam justiciam per Angliam

tenere ; & ut legaliter viveret, accepit uxorem, filiam Regis *Scocie* ; de qua primum unam filiam habuit ; quam postea Imperatori *Alemannie* in matrimonium junxit, habuit etiam de eadem uxore sua unum filium qui non diu vivens huic vitæ finem fecit.

Non longum autem tempus fuit postquam *Henricus* Rex coronam *Anglie* suscepit, quod frater suus *Rodbertus* de *Jerusalem* rediit, atque suam *Norhmanniam* quam fratri suo *Willielmo* invadiaverat, recepit. Audiens itaque quod *Henricus* frater suus Rex *Anglorum* esset constitutus cepit indignari adversus illum, multum ei minari, quod Regnum *Anglie* suscipere ausus fuisset ; non recte cogitans neque intelligens quid Scriptura dicit : quia nulla potestas nisi à Deo est : Hac igitur de causa, cepit navigium preparare quale potuit, quo preparato, in *Angliam* transnavigavit ; *Henricus* autem Rex, cujus fiducia tota erat in Deo ; magnam militiam *Anglorum* congregans ; velociter venit adversus eum ; paratus eum & omnes qui cum eo venerant de terra *Anglorum* expellere, quod profectò annuente Deo in brevi fecisset, nisi frater suus cum eo concordiam egisset ; facta itaque inter eos concordia, aliquanto tempore demoratus est Comes *Rodbertus* in *Anglia* ; in qua postquam tam diu fuit quantum ei placuit : in *Normannia* remeavit.

Non diu autem duravit inter eos ista concordia, *Rodbertus* vero Comes plus justò credens illis qui magis volebant inter eos discordiam esse quam pacem, iterum cepit occasiones querere ; fratremque suum ad discordiam commovere ; Rex autem *Henricus*, non diutius hoc ferens, quam citius potuit mare transivit ; atque non multo post, non parvo exercitu congregato obsedit civitatem *Baiocas* eamque citius capiens fere omnem destruxit.

ſtruxit. Deinde cepit *Cadomum*. Poſt aliquantum verò temporis cum obſideret quoddam caſtrum Comitis *Moritonii* quod vocatur *Tenerchebrai*; atque obſidendo laboraret ut illud caperet; frater ejus *Rodbertus* Comes, & Comes *Moritonii* cum magna multitudine militum, putantes ſe de Rege *Henrico* vindicare; eumque omninò de terra delere, cum magno impetu irruerunt ſuper eum & ſuper eos qui cum illo erant, ſed judicio Dei ſuper eos veniente, capti ſunt ambo, & multi alii cum iis, ab hominibus Regis *Henrici* atque ante eum adducti.

Finita itaque hac obſidione atque illis in captione ſua retentis; Rex *Henricus* totam *Normanniam* & omnia caſtella Comitis *Moritonii* in ſuum Dominium ſuſcepit: atque ita omnis terra ſedata, rediens in *Angliam Rodbertum* Comitem fratrem ſuum & Comitem *Moritonii*, & quoſdam alios quos ei placuit ſecum adduxit, eoſque adhuc in captione tenere decernit.

Hic eſt autem Status *Anglie* & *Normannie* ad preſens, que autem poſt hec in his terris futura ſint, poſteritas videbit.

Seriem vero hujus Generationis & Ordinem ab illo *Dano* qui *Rollo* vocatus, Terram que vocatur *Normannia* ſuper Regem *Francie* conquiſivit, & conquiſita ille & heredes poſt eum poſſederunt uſque ad *Henricum* qui modo eam regit & poſſidet; ſic quidam computare ſolent,

Rollo inquiunt hujus Genealogie primus fuit.
Willelmus vero filius ejus qui vocatus eſt *Longaſpata* ſecundus extitit.

Ricardus vero hujus *Willelmi* filius tercius fuit.

Ricardus hujus *Ricardi* filius qui Abbatiam *Fiscanni* construxit in quarto loco post *Rollonem Normannos* rexit.

Rodbertus vero filius *Ricardi* qui *Jerusalem* pertexit sed dum inde revetteretur apud *Nicam* vitam presentem finivit hujus generationis quintus Comes *Normannorum* extitit.

Willelmus vero hujus *Rodberti* filius qui non solum *Normanniam* sed etiam *Angliam* possedit in sexto loco successit.

Post illum autem in septimo loco fuerunt filii ejus ex quibus solus *Henricus* modo *Normanniam* & *Angliam* possidet: Quis vero post eum has terras possidebit, & possessas Gubernabit, Generatio que tunc erit videre poterit.

Ubi sepulta jacent Horum Corpora.

Rollo & *Willelmus* filius ejus jacent *Rotomagi* in ecclesia Beate *Marie* que est caput Archiepiscopatus.

Ricardus vero filius *Willelmi* & alius *Ricardus* jacent *Fiscanni*.

Rodbertus vero filius *Ricardi* qui rediens de *Jerusalem* vitam presentem finivit in *Nica* civitate sepultus quiescit.

Willelmus vero filius *Rodberti* jacet *Cadomi* in ecclesia Beati *Stephani* quam ipse edificavit.

Fecit autem iste *Willelmus* tres Abbatias de suo Dominio, duas *Cadomi*, unam de Monachis ubi ipse Jacet, aliam de Sanctimonialibus ubi Uxor ejus *Mathildis* Regina sepulta est: fecit autem & terciam in *Anglia*, in eo loco ubi ei Dominus victoriam tribuit de inimicis, que multo minoris pretii est quam fuisset,

si

si eam dedicare potuisset. Cum enim eam primum incepit, cogitavit eam facere unam de Majoribus & ditioribus ecclesiis Angliæ: sed prevenitus morte non potuit facere sicut cogitaverat. Ex cujus rei eventu discimus: Quod sapienter agit, qui bonum quod agere disponit quam citius potest perficere satagit. Nullus enim novit si hodie vivit, si crastinum diem videre poterit: & ideo prudentius agit, qui bonum quod in crastico agere disponit, hodie faciat si possit. Securius enim gaudemus de bono quod factum habemus, quam de bono quod facere disponimus, & nondum fecimus. Multotiens enim quibusdam accidit, ut dum differunt bonum facere quod volunt, eis deficiat & voluntas & possibilitas. Que autem de his Comitibus unde locutus sum à quibusdam soleant referri; si ego scribam fortassis quibusdam non displicebit.

Rollo qui hujus Generationis primus exstitit, antequam *Normanniam* cepisset, sicut quidam dicunt *Paganus* erat; sed predicatione cujusdam Archiepiscopi *Rotomagi* fidem Christi suscepit, qui quidem baptizatus est; leges Christianas quam diu vixit bene custodivit, & omni populo suo bene custodire fecit. Quante vero humilitatis fuit, postquam fidem Christi suscepit, ex una re quam fecit patenter cunctis innotuit: Quodam tempore postquam baptizatus est cum Rege *Francie*; venientes ad eum homines *Rotomagi*, ceperunt eum rogare ut de *Francia* faceret corpus sancti *Audoeni* redire, quod propter timorem ejus illuc olim fuerat translatum; antequam cepisset *Normandiam*. Tristes enim & multum dolentes fuimus, quod

sic

sic Archiepiscopum nostrum predictum habemus: hoc audiens Comes mandavit Regem *Francie*, ut ei suum presbiterum redderet, quod si non faceret, proculdubio sciret quod nullo modo pacem cum eo habere posset: tunc Rex *Francie* nolens ei de hac re facere contrarium, reddidit ei sicut petebat suum presbiterum: tunc Comes precepit ut inde reduceretur Sanctus *Audoenus* sueque redderetur ecclesie unde fuerat asportatus: Monachi igitur qui custodes ejus fuerant dum in *Francia* fuit, reportaverunt eum usque ad quandam villam que est ad unam *Leuuam* juxta urbem *Rotomagi*: Ibi itaque cum perveniissent, non parum de via lassati: Manserunt in illa, nocte; Ut, manè surgentes, si possent, sanctum *Audoenum* ad suum locum reportarent; Cum itaque manè surgerent, eumque ad Civitatem portare vellent, nullo modo potuerunt: tunc tristes Monachi nimiumque dolentes de hoc quod eis acciderat, mandaverunt civitati quod Sanctum *Audoenum* nullo modo poterant movere de loco illo ubi jacuerant illa nocte: quod cùm Comiti qui tunc erat *Rotomagum* nuntiatum fuisset, respondit: quia merito hec tribulatio de corpore Sancti *Audoeni* eis accidisset; quia si rectè cogitassent, sensumque rectum habuissent, ad processionem & cum magna devotione, contra eum venire debuissent. Post hec precepit Comes Archiepiscopo omnique populo *Rotomagi*; ut in langis & nudis pedibus cum eo ad sanctum *Audoenum* pergerent; ejusque pietatem quam devotius possent exorarent, quatinus ad stultitias eorum vel negligentias non respiceret, sed propitius illis fieret, seque de loco illo ad Civitatem ubi Archiepiscopus fuisset transferri permitteret.

mitteret. Tunc ipse Comes primus sicut aliis preceperat in Langis nudisque pedibus usque ad villam ubi Sanctus *Audoenus* erat, pervenit.

Quo cum pervenisset, protinus cum omni populo, qui cum eo erat coram feretro ejus prostratus, hec orando dixit: Sancte *Audoene*, Bone Archiepiscope & Advocate noster, permittito vestrum corpus ad civitatem transferri; ubi Presulis officio functus fuisti, & sacras benedictiones sepius fecisti; & Ego Do Ecclesie vestre & vobis ---- totam terram que adjacet ab isto loco usque ad menia Civitatis: Tunc continuò Comes & populus summissis humeris feretrum in quo Sanctum corpus erat facillime deportare ceperunt; & sic usque ad ecclesiam suam, gaudentes & exultantes deportaverunt: ex hujus rei eventu dixerunt quidam illam villulam vocari longum *Peanum*, eo quod Comes illud tam longum iter nudis pedibus perexisset. Si quis hoc factum non esse signum magne humilitatis asserit; de eo veraciter dici potest; quia quid sit maxima humilitas nescit.

Quiddam verò aliud dicitur eidem Comiti accidisse eo tempore quo primum pacificatus est cum Rege *Francie*; quod non ideo scribo ut certus sim hoc verum esse, sed quia a multis audivi, hoc referri: qui asserebant id veraciter eveniisse: Quodam die dum sicut dicebant, erat idem Comes *Rotomogum*, ad vesperam ipsius diei stabant plurimi homines ante domos suas que erant juxta ripam *Sequane*; illic vero cum essent, eandemque aquam aspicerent, viderunt unum equitem transire super aquam quasi iret super terram, & usque ad eos pervenientem: Hac igitur de re non parum obstupefacti,

stupefacti, cum ad eos pervenisset, ceperunt inquirere ab eo quis esset & unde venisset; ille verò respondens; videtis inquit quod ego unus homo sum, & hodie multum manè motus sum de *Rethnis* in *Brittannia*; *Abrincas* vero ad Sextam horam comedi; ad vesperam autem hucusque sicut videtis perveni. Tunc mandaverunt Comiti, qui, sicut dixi, tunc erat in civitate, de illo homine qui sic transierat super aquam sine ulla lesione; Comes vero audiens rem tam insuetam, mandavit ei, ut illi loqueretur antequam hinc recederet: tunc ille remandavit Comiti; quia in crastino eum usque ad primam expectaret: Ille autem in crastino mane surgens viam suam tenuit, & nichil locutus est Comiti; Comes verò ut audivit eum recessisse dixit; eum mentitum esse, & ideo putare eum aliquod fantasma esse; qui sic eos voluisset deludere: tunc dixerunt quidam qui affuerunt; quia non prima Comitis sed prima sua ei mandasset; prima enim ejus multò citius esset quam prima Comitis, & ideo verum fuit quod dixit. Dum vero in illa nocte sederet ad focum sui hospitis; & suus hospes de multis eum interrogaret, & maxime de illo Comite, si generatio illa diutiùs maneret; respondit, illam diutius manere; illudque imperium usque ad septimam generationem viriliter durare: Cum itaque hospes inquisisset quid post septimam generationem futurum esset; nichil voluit respondere; sed de uno fussello quem manu tenebat, cepit per cineres foci quasi *reias* facere; & cum hospes suus vehementer ab eo exigeret, quid post septimam generationem eveniret: de ipso fussello quem manu tenebat commiscuit *reias* quas in cineribus fecerat; ex quo signo quod fecerat, arbitrati

trati sunt, quod post septimam generationem illud imperium vel deficeret, vel magnas pateretur dissensionum tribulationes.

Willelmus vero filius ejus sicut quidam dixerunt interfectus est per traditionem a quodam Comite in *Ponteio*; quem cum interfectum *Franci* audissent, mox ejus filium *Ricardum* ceperunt, & in *Franciam* in captionem duxerunt. Hic *willelmus* habebat unum scriniolum de quo ipse semper portabat clavicülum, quod diffirmantes postquam interfectus est, nichil in eo aliud invenerunt, nisi unam stamineam quam solebat, sicut dicebatur, in Quadragesima vel in aliis diebus afflictionis portare. *Dani* autem audientes quod *Franci* interfectum habuissent *willelmum* parentem illorum, non parum irati de hoc, quam citius potuerunt cum magna multitudine pugnatorum, transnavigantes in *Normanniam* ad portum *Dive* arrivaverunt, contra quos Rex *Francie* cum non parva multitudine militum venit; si fortè posset illos pugnando de terra *Normannie* expellere; veniens itaque fere usq; ad illos, timuit cum eis pugnare, sed quesivit cum eis pacem; facere illumque Comitem qui *Willelmum* interfecerat cum eis concordare. *Dani* autem ad horam finxerunt se illam concordiam suscipere: Sed ut viderunt illum qui parentem illorum interfecerat, non curantes de concordia quam Rex *Francie* querebat; impetum facientes super eum, interfecerunt illum & plurimos de eis qui cum illo venerunt; Regem vero *Francie* fugere compulerunt, quem fugientem homines *Rotomagi* ceperunt atque captum duxerunt *Rotomagum*. Postea vero com-

mum decretum *Franci* & *Dani* talem Concordiam inter se fecerunt; ut *Dani* redderent Regem *Francie*; & *Franci* redderent *Ricardum* filium *Willelmi* Comitem *Norhmannie*. Tunc in illa concordia auxerunt & augendo creverunt *Norhmanniam Dani*, ab aqua que vocatur *Ardella* usque ad aliam aquam que vocatur *Etta*. Alii tamen dicunt ab *Etta* usque ad *Isaram*. Constitutum est etiam & aliud in illa concordia, quod Comes *Norhmannie* nullum servitium faceret Regi *Francie* de terra *Normannie*, nec ei aliter serviret, nisi Rex *Francie Feudium* daret ei in *Francia*, unde ei servire deberet. Quapropter Comes *Normannie* de *Normannia* tantummodo facit homagium Regi *Francie*, & fidelitatem de vita sua, & de terreno honore suo; Similiter & Rex *Francie* facit fidelitatem & de vita sua, & de terreno honore Comiti *Normannie*, & nichil aliud differt inter illos, nisi quod homagium non facit Rex *Francie* Comiti *Normannie*, sicuti Comes *Normannie* Regi *Francie* facit. Hanc libertatem adquisierunt tunc *Dani* parentibus suis Comitibus *Norhmannie*.

Post istum *Ricardum* alius *Ricardi* filius ejus tenuit *Normanniam*. Hic *Ricardus* fuit pater patrie: Toto enim tempore ejus abundavit *Normannia* omnibus bonis, & tanta pax fuit in *Normannia* ejus tempore, ut nec etiam carrucarii de campis suis auderent ferra carruce ad suas domos reportare, & si alicui furata fuissent, preceperat Comes, ut ad eum veniret, & quicquid furto perdidisset, ipse ei ex integro totum redderet: Quod audiens uxor cujusdam carrucarii, probare volens si verum esset hoc quod Comes

juſſiſſet, quadam die furata eſt ferra mariti ſui; Carrucarius verò in craſtino veniens ad carrucam ſuam, & ferra ſua non inveniens, venit ad Comitem, eique retulit, quod ferra carruce ſue ei furata eſſent; tunc Comes precepit ei dare denarios, unde poſſet alia ferra emere. Ille itaque rediens domum, retulit uxori ſue quid ei Comes feciſſet; tunc dixit ei uxor ipſius quod modo bene eſſet, quia & ipſe denarios & ipſa ferra haberet. Carrucarius verò hoc audiens me infideliter ageret, reportavit Comiti ſuos denarios, eique retulit quid uxor ſua feciſſet. Comes verò retinens Carrucarium aliquanto tempore miſit et precepit, ut uxori ejus erruerentur oculi propter furtum quod fecerat: cum itaque Carrucarius domum ſuam rediſſet, inveniens quod uxori ejus oculi eſſent eruti, cum indignatione dixit ei: Noli amplius furari, & a modo diſce obſervare precepta Comitis. Hic Comes edificavit Eccleſiam *Fiſcanni*, illamque non parum rertis & ornamentis divitem fecit. Hic erat ſolitus fere omni tempore ſuam curiam in Paſcali ſolemnitate apud *Fiſcannum* tenere, & tunc quando ei placebat in ipſa ſolemnitate ſolebat unam *Tinam* plenam rextis turibulis, candelabris, & quibuſdam aliis ornamentis, & cooperram quodam optime palliat, ipſe & uxor ſua ante altare ſancte *Trinitatis* ponere, ipſaque pro ſuis peccatis ibi Deo offerre.

Ipſe verò die poſt miſſas antequam ad curiam ſuam iret, atque cum Baronibus ſuis comederet, veniebat cum duobus filiis ſuis *Richardo* & *Roberto* in refectorio Monachorum, & illi filio ſui apportantes

de fenestra coquine scutellas sicut solent Monachi facere, portigebant patri suo, & ipse per seipsum prima fercula ante Abbatem & postea ante Monachos ponebat : quod cum perfeciſſet, cum magna humilitate, veniebat ante Abbatem, & sic ab eo accepta licentia, letus & gaudens ibat ad curiam suam. Aliquando verò de sua mensa, mittebat Abbati scutellam argenteam plenam pisibus, & mandabat ei ut eam retineret, atque inde suam voluntatem faceret. Iste bonus *Ricardus*, non solum Ecclesie *Fiscanni* multa dedit, sed etiam aliis Ecclesiis. Quadam verò nocte jacuit apud *Genmeticum*, mane verò surgens, sicut sua consuetudo semper erat, perrexit orare ad monasterium ; qui post orationem, posuit super altare unum fussellum : recedente verò illo venerunt Secretarii ad Altare, putantes se ibi esse inventuros vel marcam Auri, vel unciam, vel aliquid hujusmodi : invenerunt itaque fussellum ; atque quid hoc significaret non parum mirari ceperunt ; ad ultimum inquisierunt ab eo quid hoc esset, quod super Altare illum fussellum posuisset. Tunc respondit eis, quod hoc esset *Vimonasterium*, scilicet quoddam manerium quod ipse illis pro anima sua dabat. Hec de *Ricardo* Comite dicta sufficiant, quamvis non possint facile omnia bona que fecit referri.

De *Rodberto* verò Comite filio ejus, & de *Willelmo* filio *Rodberti* Comitis, qui *Angliam* conquisivit ; quia inde jam satis diximus ; non est opus amplius quid dicere. De *Willelmo* tamen hoc audivi ; quia cum natus fuisset, & super quoddam stramen quod ibi erat casu ponretur, ambas manulas suas super

stramen

stramen projecit; easque illo stramine plenas super pectus suum apposuit.

In Calce hujus Libelli in eadem scriptura; adjicitur Catalogus suppeditancium naves ad expeditionem Gulielmi *Comitis in* Angliam.

Willelmus Dux Normannorum *veniens in* Angliam *ob adquirendum Regnum jure sibi debitum habuit.* A.

Willelmo dapifero filio Osberni *sexaginta naves.*

ab Hugone *postea Comite de* Cestria *totidem.*

ab Hugone de Mumfort *quinquaginta naves & sexaginta milites.*

rumi

a Romo Elemosinario Fescanni *postea episcopo* Lincoliensi *unam navem cum viginti militibus.*

a Nicholao Abbate de Sancto Audoeno *quindecim naves cum centum militibus.*

a Roberto Comite Augi *sexaginta naves.*

a Fulcone Dauno *quadraginta naves.*

a Geroldo Dapifero *totidem.*

a Willelmo Comite Deurons *octoginta naves.*

a Rogero de Mumgumeri *sexaginta naves.*

a Rogero de Baumunt *sexaginta naves.*

ab Odone Episcopo de Baios *centum naves.*

a Roberto de Morotemer *centum & viginti.*

a Waltero Giffardo *triginta cum centum militibus.*

Extra

Extra hos naves que computata simul *M.* efficiunt, habuit Dux a quibusdam suis hominibus secundum possibilitatem unius cujusque multas alias naves.

Matildis postea Regina, ejusdem Ducis uxor, ad honorem Ducis fecit effici, navem que vocabatur *MORA*, in qua ipse Dux vectus est: In prora ejusdem navis fecit fieri eadem *Matildes* infantulum de Auro; dextro indice monstrantem *Angliam*; & sinistra manu imprimentem cornu eburneum ori; pro quo facto Dux concessit eidem *Matildi Comitatum Cantie.*

Vt

Ut Generationes in Hiſtoriola precedenti clariùs intelligantur, hanc Collationem ad illuſtrationem Stemmatis Normannici lubens ſubjecit *Silas Taylor*.

Guion nobilis Dacus cum duobus filiis Rollone & Gourino è Dania precepto Regis irati diſcedere ordinati erant; qui, non ſolum iſtud mandatum ſpernentes, ſed etiam & bellum contra ipſum movebant: quo, & Guion pater, & Guorinus filius ejus, interfecti fuerant: & Rollo cum participibus ſuis ſibi novas ſedes quærere coactus erat.

Guion.

Popes & popa filia *Guidonis* Comitis *Silvanectenſis*, capta in obſidione urbis *Bajocenſis*. Walſ. uxor ſecunda.

* * *

Rollo, qui etiam & *Rodbertus* ad fontem baptiſmalem dictus eſt a *Rodberto Duce Francorum*, *Anno Dom.* 912. quo tempore factus erat Comes *Normanniæ*, a Septentrionalium invaſione ſic dictæ, quæ antea *Neuſtria* vocata erat, *Rotomagi* ſepultus jacet.

Guilla aut *Gilla* filia *Caroli Francorum* Regis. Gemet. & Speed.

Gourinus qui etiam & *Gurim* eſt dictus a Willelmo Gemeticenſi, fatis cecidit ut antea.

* * *

Willielmus Longaſpata; Dux *Normanniæ* ædificavit Eccleſiam *Gemeticenſem*, interfectus erat inſidiis *Arnulfi Flandriæ Comitis* apud *Pinchimacum* ſuper fluvium *Sompne* & *Rotomagi* in eccleſia B. *Mariæ* juxta patrem eſt ſepultus, è Guliel. Gemet. obiit 16 *Kalend. Jan.* 944. ut è Thoma Walſ. ſed 943. è Willelmo Gemetic.

Sporta filia *Huberti* Sentilicenſis Comitis; *Herberti* in Walſing. in ypod. Neuſtriæ.

Girlotta, nupta *Gulielmo Pictavienſi* Comiti, quæ & *Gerloc* dicitur. Th. Walſ. in ypod. Neuſtr. & Gul. Gemet.

Gunnora è nobiliſſima proſapia & ſanguine *Dacorum* orta, in vita primæ uxoris ejus Concubina erat, ypod Neuſt. ſed poſtea eam in uxorem duxit.

* * *

Ricardus primus etiam & *durus* dictus: vivente patre Ducatui præficitur, obiit, *Anno Dom.* 996. in Regimine illius, *Otho Imperator* obſidione *Rhotomagum* cinxit, ubi *Normanni* (portis patefactis impetu repentino proruentes,) tanto turbine depopulati ſunt adverſarios ut tentoriis complicatis in conticinio noctis dimiſſa obſidione, cum morte nepotis *Imperatoris*, greſſus retorquent. *Fiſcanni* ſepultus jacet.

Agnes quæ & *Emma* dicta, filia *Hugonis Magni* (aut *le Grand*) Comitis *Pariſienſis*, *Abbatis Sancti Germani*, & patris *Hugonis Capeti Regis Franciæ*, ſine prole mortua eſt: ypod Neuſtr.

——filia *Willielmi* ducis *Normanniæ* nupta *Herberto* Comiti *Giromandorum*.

* * *

Ricardus bonus comes Normanniæ ſecundus, qui cum patre ſuo, *Fiſcanni* Sepultus jacet.

Judith Soror *Gorffridi Britannorum Comitis.*

Eſtrica uxor ſecunda ſoror *Canuti Regis Angliæ* ſine prole.

Pavia uxor tertia à qua *Gul.* Comitem *de Arques* & *Maugerum Archiepiſcopum Rotomagi* (in filios ut volunt alii, ſed alii in Nothos) genuit.

Robertus Archiepiſcopus *Rotomag.*

Alanus.

Haviſa nupta *Gorffrido Britannorum* Comiti.

Guido aut *Eudo*, ſibi intendens *Ducatum Norm.* tempore *Gul. Conq.* interfectus erat.

Emma nupta (poſtea *Canuto Regi Angliæ.*)

Edwardus dictus *Confeſſor* obiit *ſine* prole. *Rex Angliæ.*

Ethelredo Regi Anglorum.

Alfredus & inſidiis *Godwini* Comitis interemptus erat.

Matildis nupta *Edoni Comiti de Chartres.*

Malgerius & duo alii filii.

Ricardus; cujus in hâc hiſtoriolâ nulla eſt mentio, quem dicunt a *Roberto* fratre ſuo veneno interemptum fuiſſe; ſerturque eum icer iſtud *Feroſolymitanum*, pro expiatione hujus peccati ſuſcepiſſe.

* * *

Rodbertus Dux Normanniæ qui rediens a terra ſancta mortuus eſt, & in *Nica* civitate inhumatus jacet, ex hiſt. preced.

Arletta (cujus nec meminit hiſtoria noſtra) fuit ut plurimi volunt concubina ejus, etſi alii eam poſtea Duci nuptam eſſe aſſerunt.

Herlino homini ignocæ conditionis ſecundo nupta erat: is, in fragmento *Stephani Cadomenſis* nominatur *Herluinus de Contavilla.*

Adeliza uxor *Reginaldi Comitis Burgoniæ* è quibus.

Guido Comes *de Brionne & Vernon.*

Alianora uxor *Balduini quarti Comitis Flandriæ.*

Balduinus —— *quintus* Comes *Flandriæ.*

* * *

Willelmus dictus *nothus Dux Normaniæ*, poſtea conqueſtu *Rex Anglorum* ſepultus jacet *Cadomi* in Eccleſia B. *Stephani.*

Matildes Duciſſa *Norm.* poſtea (ſecundum hiſtoriam noſtram) *Comitiſſa Cantiæ*, denique *Regina Angliæ.*

Odo Epiſcopus Bajocenſis a Rege *Willelmo* fratre ſuo uterino in dignitatem *Comitis Cantiæ* in *Anglia* promotus erat.

Robertus Comes *Montaigniæ*, ſed *Moritonii* dicitur in frag. *Steph. Cadomenſis* vir craſſi & heberis ingenii ut apud *Willelm. Taylur de Rotomag.*

Emma uxor *Ricardi* Comitis *Auranchiæ* in *Normannia*, quibus genitus erat *Hugo Lupus Cestriæ Comes Palatinus.*

* * *

Robertus Dux Normanniæ.

Willelmus ſecundus Rex Angliæ, ſepultus in Eccleſia Sancti *Petri Winton.* requieſcit.

* * *

Henricus primus Rex Angliæ & Dux Normanniæ.

Malda ſeu *Matildis* filia *Malcolmi Cammoir tertii, Regis Scotorum & Margaretæ Sororis Edgari filii Edwardi.*

Matildis Imperatrix.

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Books Printed for and Sold by John Starkey at the *Miter* betwixt the middle *Temple-Gate* and *Temple-Bar* in *Fleetstreet*.

Folio's.

THe Voyages and Travels of the Duke of *Holsteins* Ambassadors into *Muscovy*, *Tartary*, and *Persia*, begun in the year 1633. and finisht in 1639. containing a Compleat History of those Countries; whereto are added the Travels of *John Albert de Mandelslo* from *Persia* into the *East-Indies*, begun in 1638. and finisht in 1640. the whole illustrated with divers accurate Maps and figures, and written by *Adam Oleanius* Secretary to the Embassy.

The World Surveyed, or the famous Voyages and Travels of *Vincent de Blanc* of *Marseilles*, into the *East* and *West-Indies*, *Persia*, *Pegu*, *Fez*, *Morocco*, *Guinny*, and through all *Africa*, and the principal Provinces of *Europe*.

A Practical and Polemical Commentary, or Exposition upon the third and fourth Chapters of the latter Epistle of Saint *Paul* to *Timothy*, by *Thomas Hall*. B. D.

Brevia Judicialia, or an Exact Collection of approved forms of all sorts of Judicial Writs in the Common-Bench, together with their returns, by *Rich. Brownlow*.

Thesaurus Brevium, or a Collection of approved forms of Original and Judicial Writs in the Kings Bench, with their special Directions, by *J. C.*

Action upon the Case for Slander, or a Methodical Collection of thousands of Cases in the Law, of what words are Actionable, and what not, by *William Shepheard*, Esq;

Guillims display of Heraldry.

Blundels Treatise of the Sybells.

Quartos.

A Collection of Declarations, Messages, Speeches, Remonstrances, &c. which passed betwixt King *Charls* the first, and the long Parliament, in the years 1641, 1642, 1643.

Richard Baxters Treatise of Saving Faith.

Lawsons Politica Sacra & Civilis, or a model of Civil and Ecclesiastical Government.

The History of *Gavelkind* with the Etymology thereof, containing a vindication of the Laws of *England*, together with a short History of *William* the Conqueror, by *Sylas Taylor*.

Octavo's.

An Historical and Geographical description of the great Country and River of the *Amazones* in *America*; with an exact Map thereof, Translated out of *French*.

The Shepherds *Paradise*, a Pastoral, by *Walter Mountague*.

Aminta, the famous *Italians* Pastoral, translated into *English*.

Ploudens Queries, or a *Moot Book* of choice Cases in the Common-Law, Englished, methodized, and enlarged by *H. B.*

An Exact Abridgement of all the Statutes in force and use, made in the 16th, 17th, & 18th. of King *Charls* the first, and in the 12th, 13th. & 14th. of King *Charls* the second, *viz.* from the 4th. of *Jan.* $164\frac{1}{2}$. to the 31th. of *Febr.* $166\frac{3}{4}$ by *William Hughes*, Esq;

Finche's Discourse of the Law in four books. *Engl.*

Tho. Goodwin. Opuscula Theolog.

Tho. Hall Apologia pro Ministerio Evangelico.

---------Translation of the second book of *Ovids* Metamorph.

---------Treatise against the Millenaries.

Twelves.

Tho. Hookers Miscellanies in Divinity.

Richt Baxters Call to the Unconverted.

A